under which the impugned letters have been issued, which they have failed to do.

(6) It has been very strenuously argued by the learned counsel for the respondents that the impugned letters were issued with the object of preventing an illiterate agriculturist from being defrauded by traders, who may sell sub-standard diesel engines to him, whereby he would suffer loss. The object is no doubt laudable and advice can be tendered to the illiterate person as to what is good for him, but he cannot be forced to buy a certain "Make" of a diesel engine and from a particular dealer thereby leaving no choice to him. It is, of course, open to the Bank whether to grant or not to grant a loan to a member, but it is not for the Registrar or the State Government to lay down conditions for the utilisation of the loan granted by it to the loanee without framing rules under section 85 of the Act. The State Government or the Registrar have, by issuing the impugned directions become agents or canvassers for the manufacturers and dealers of some of the Diesel engines leading to the creation of monopolies in their favour which is against the principle of freedom of trade enshrined in Article 19 of the Constitution.

(7) For the reasons given above, this petition is accepted with costs and the impugned letters, dated February 8, 1972, copies of which are Annexures 'C' and 'C/1' to the writ petition, issued by the Registrar are hereby quashed. The costs will be paid by respondent 1. Counsel's fee Rs. 100.

B. S. G.

....

FULL BENCH

Before Bal Raj Tuli, S. S. Sandhawalia and M. R. Sharma, JJ.

THE STATE OF PUNJAB,—*Appellant.*

versus

NAND KISHORE,—*Respondent.*

Regular First Appeal No. 156 of 1965.

May 8, 1974.

Code of Civil Procedure (Act No. V of 1908)—Section 11—Constitution of India (1950)—Article 226—High Court declining to issue a writ on the

assumption that statutory rule is valid—Supreme Court subsequently declaring the rule to be unconstitutional in another case—Suit by the writ petitioner challenging the validity of the same rule—Whether barred by res judicata—Decision on pure questions of law—Whether operates as res judicata—Exception to the rule—Stated.

Held, (per majority, Tuli and Sandhawalia, JJ. Sharma, J. Contra.) that a decision in an earlier writ petition on merits bars on the general principles of res judicata a subsequent suit involving the same question and for the same relief. This rule will apply even if a Court of record or a superior Court overrules an earlier decision on a point of law or declares a statutory provision as *ultra vires*. The decisions rendered earlier *inter parties* based on the statutory provision will not become nugatory, and the parties thereto will not be entitled to re-agitate the issues over again. The settled principle of resjudicata is that finality must ultimately attach to a decision of the Court, if not appealed from, irrespective of its correctness. If every *lis* between the parties is liable to be re-opened by a subsequent change of legal opinion, then all earlier litigation relevant thereto would always be in a flux. The alteration of the law by the competent authority as an exception in the context of the rule of res judicata means a change enacted by the Legislature and not by virtue of a different interpretation subsequently given by the Court. The Courts of record including the Supreme Court only interpret the law as it stands but do not purport to amend the same. Hence the decision of a High Court declining to issue a writ of *mandamus* on the assumption that statutory rule is valid operates as res judicata in a subsequent suit instituted after the statutory rule had been declared as unconstitutional by the Supreme Court of India.

Held (per majority Tuli and Sandhawalia, JJ.) that a pure question of law including the interpretation of a statute will be *res judicata* in a subsequent proceedings between the same parties. To this salutary rule, at least four specific exceptions are indicated. Firstly when the cause of action is different, the rule of *res judicata* obviously will not be attracted. Secondly, where the law has, since the earlier decision been altered by a competent authority. Thirdly, where the earlier decision between the parties related to the jurisdiction of the Court to try the earlier proceedings, the same will not be allowed to assume the status of a special rule of law applicable to the parties and, therefore, the matter will not be *res judicata*. Fourthly where the earlier decision declares valid a transaction which is patently prohibited by law, that is to say, it sanctifies a glaring illegality.

Held, (per Sharma, J. Contra.) that the procedural law is the handmaid of justice and if the provisions of a statute are capable of two interpretations, the one which advances the interests of justice should be adopted. Moreover, a Court of law is entitled to correct its own mistakes apart from the statutory jurisdiction conferred upon it to correct any error committed by it in the course of a trial. The Court has a power to interpret laws in such

a manner that its power to correct its own errors could be freely exercised in the absence of anything to the contrary in a statute. These principles have a pride of place in any system of laws. Each one of them may have individual area of operation but cases also arise in which a Court is called upon to draw upon more than one of them. In that event, the Court is under a duty to read them harmoniously and to strike a happy balance between them. It is settled law of the pleadings that a party to a cause has to plead facts leaving it to the Court to apply the principles of law. If a decision is given on a mixed question of law and facts, then it cannot be re-opened because it is in the interest of all concerned that there should be some finality to the litigation and no body should be vexed again over the same cause. The Court cannot be blamed because the facts have to be proved by the parties and the law has to be interpreted in the background of these facts. But if a wrong decision, on a pure question of law is given, then really speaking it is the Court itself which is to be blamed. If finality is attached to such a decision then the principle that the act of a Court shall injure no body would have to be ignored. In such a situation, justice may have to be denied to an aggrieved party because of mere technicalities of procedural law. A Court discovers law and does not lay it down. When law is changed by the competent authority, it cannot insist that the decision given by it on the basis of old law should be regarded as sacrosanct. Hence the decision of a High Court declining to issue a writ of *mandamus* on the assumption that a statutory rule is valid does not operate as res judicata in a subsequent suit instituted after the statutory rule had been declared as unconstitutional by the Supreme Court of India.

Case referred by a Division Bench consisting of Hon'ble Mr. Justice S. S. Sandhawalia and Hon'ble Mr. Justice M. R. Sharma vide order dated 14th July, 1972 to a Full Bench for decision of an important question of law involved in the case. The Full Bench consisting of Hon'ble Mr. Justice Bal Raj Tuli, Hon'ble Mr. Justice S. S. Sandhawalia, and Hon'ble Mr. Justice M. R. Sharma, after deciding on 8th May, 1974 the question referred to returned the case to the Division Bench for decision of the case.

Regular First Appeal from the decree of the Court of Shri M. L. Mirchia, Sub Judge 1st Class, Patiala (D), dated 14th October, 1964 decreeing the suit of the plaintiff for Rs. 13,649.08 nP. with costs and ordering that the defendant shall also pay interest at the rate of Rs. 6 per cent per annum on Rs. 13,649.08 nP. from 10th June, 1964 till realization.

I. S. Tiwana, Deputy Advocate-General, (Punjab), *for the appellants.*

H. L. Sibal, Senior Advocate with S. C. Sibal and Kapil Sibal, Advocates, *for the respondent.*

ORDER

SANDHAWALIA, J.—The complexities of the practical application of the otherwise settled principles of constructive *res judicata* have

necessitated this reference to the Full Bench. The question for determination has been formulated in the following terms :—

> "Whether the decision of the High Court declining to issue a writ of *mandamus* on the assumption that a statutory rule was valid operates as *res-judicata* in a subsequent suit instituted after the statutory rule had been declared as unconstitutional by the Supreme Court of India?"

The facts are not in dispute and a brief marshalling thereof with particular reference to the issue of law involved, therefore, suffices. Pandit Nand Kishore, respondent, was employed as an Assistant in the Food Distribution Branch of the Punjab Civil Secretariat when he was compulsorily retired from service by an order in the following terms :—

> *"ORDER of the Governor of Punjab*
>
> Sanction is accorded under the provisions of Rule 5.32(b) of the Punjab Civil Services Rules, Volume II, to the compulsory retirement from Government service of Shri Nand Kishore, Assistant, Food Distribution Branch, Punjab Civil Secretariat, with immediate effect.
>
> (2) He will be entitled to such proportionate pension and death-cum-retirement gratuity as may be admissible under the rules.
>
> Chandigarh :
> Dated the 6th January, 1961.
>
> Sd/- E. N. Mangat Rai,
> Chief Secretary to Government Punjab. "

(2) Against the above-said order the respondent represented to the higher authorities but no relief was apparently granted. He also submitted a memorial to the Governor but was informed on the 9th of June, 1961, that the same had been considered and rejected.

(3) Nand Kishore respondent then moved civil writ No. 1061 of 1961 praying for the quashing of the order dated the 6th of January, 1961, retiring him compulsorily. This writ petition came up before a Division Bench consisting of I. D. Dua and Tek Chand,

JJ. The learned counsel for the respondent assailed the impugned order of compulsory retirement before the Bench on a variety of grounds. The Division Bench in a lucid and detailed judgment referred to all the points raised on behalf of the petitioner and repelling the same dismissed the writ petition on the 5th February, 1962. Consequently the impugned order of compulsory retirement of the 6th January, 1961, was upheld. Admittedly no appeal was taken against the decision of the Division Bench.

(4) On the 24th of February, 1964, the respondent filed a suit in the Court of the Senior Subordinate Judge, Patiala, for a declaration that the order dated the 6th January, 1961, compulsorily retiring him was invalid and that he continued to be in the service of the Punjab Government enjoying all the necessary rights and benefits thereof. An amended plaint dated the 28th of May, 1964, was allowed to be filed in order to enable him to claim the additional relief regarding the payment of arrears of pay to the respondent. In the written statement filed in the suit by the State of Punjab it was *inter alia* pleaded that the suit was barred by the principles of *res-judicata* because the matter had been heard and finally disposed of by the Division Bench judgment of the Punjab High Court in Civil Writ No. 1061 of 1961. On the pleadings eight issues were struck by the trial Court but for the purpose of this case reference to the two issues Nos. 3 and 4 in the following terms suffices :—

(3) Whether the suit is barred by *res-judicata* ?

(4) Whether the order dated 6th January, 1961 of the compulsory retirement of the plaintiff is illegal, void, without jurisdiction, inoperative, *mala fide*, unconstitutional and unauthorised ? If so, with what effect ?

The trial Court arrived at the following cryptic finding on issue No. 3:—

"The plaintiff had filed a writ petition in the High Court. Copy of the judgment is Exhibit D. 4. The view of our High Court is that judgment in writ petition does not operate as *res-judicata*. I decide this issue against the defendant."

On issue No. 4, the trial Court held that in *Gurdev Singh Sidhu* v. *The State of Punjab and another* (1), already rule 9.1 of the Pepsu Regulations had been struck down and therefore rule 5.32 of the Punjab Civil Services Rules, Volume II, which was similar in nature was also invalid and consequently the impugned order of compulsory retirement passed thereunder was illegal. As a necessary consequence the suit of the respondent was decreed and he was granted a declaration that his compulsory retirement was illegal and further a decree for Rs. 11,321.75 Paise as arrears of salary etc., with costs was passed in his favour.

(5) The State of Punjab has come up in appeal against the above-said judgment and decree. The specific and indeed the only point urged on its behalf before the referring Division Bench—as also before us—was that the suit of the respondent is barred by the principles of *res judicata* and hence the finding of the Court on issue No. 3 was incorrect. Now it is manifest that the reasoning of the trial Court for deciding issue No. 3 against the appellant State is clearly unsustainable. The sole ground for that finding was that an earlier judgment in a writ petition did not operate as *res judicata* in the subsequent suit. In *Gulabchand Chhotalal Parikh* v. *State of Gujrat* (2), their Lordships have now held in categorical terms that a decision in an earlier writ petition on merits bars a subsequent suit involving the same question and for the same relief on the general principles of *res judicata*. This legal proposition being no longer in doubt the learned counsel for the respondent has rightly not attempted to support the finding on issue No. 3 for the reasons above-mentioned but instead has raised new legal grounds to which detailed reference is made hereafter.

(6) Coming now to the question formulated for determination by the Full Bench it may be stated that I was a member of the Division Bench which referred the same. Closer scrutiny, however, reveals that rule 5.32 of the Punjab Civil Services Rules, under the provisions of which the order of compulsory retirement was passed was not as such declared unconstitutional by the Supreme Court. What in fact was struck down by their Lordships in *Gurdev Singh Sidhu's case*

(1) A.I.R. 1964 S.C. 1585.

(2) A.I.R. 1965 S.C. 1153.

(1) was Article 9.1 (as amended by the Governor of Punjab by notification issued on the 19th January, 1960) of the Pepsu Service Regulations, Vol. I, which was closely similar in import to rule 5.32 abovesaid. Also the decision in *Gurdev Singh Sidhu's case* (1) was rendered on the 1st of April, 1964, that is before the institution of the present suit by the respondent on the 24th of February, 1964. These two factual matters are no longer disputed on behalf of the parties and the question referred to the Full Bench would now be construed in this background.

(7) The core of the argument on behalf of the respondent now rests on the observations of their Lordships in *Mathura Prasad Sarjoo Jaiswal and others* v. *Dossibai N. B. Jeejeebhoy* (3). Relying heavily thereupon Mr. H. L. Sibal has contended that a pure question of law can never be *res judicata* between the parties. He, therefore, submitted that the fact that the Division Bench in C.W. No. 1061 of 1961 had upheld the order dated the 6th January, 1961, of the compulsory retirement of the respondent was no bar to the trial Court subsequently striking the same down on the ground that rule 5.32 of the Civil Services Rules on which this order was founded was unconstitutional.

(8) The scope and ambit of the ratio in *Mathura Prasad's case* (3), therefore, is the crux of the matter before us. This is so because counsel for both sides have sought to seek support from observations in the very judgment. If I may say so, the matter is not entirely free from difficulty and, therefore, a very close analysis of the facts and the reasoning of this case becomes inevitable. In the abovesaid case one Mrs. Dossibai had granted a lease of an open piece of land to Mathura Prasad for constructing buildings for residential or business purposes. The appellant Mathura Prasad made construction on the land and later he submitted an application in the Court of the Civil Judge, Borivili, that the standard rent of the land be determined under section 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The Civil Judge rejected this application on the ground that the provisions of the statute above-mentioned did not apply to open land let out for constructing buildings for residence, education, business, trade or storage. This order was confirmed on September 28, 1955 by a learned Single Judge of the Bombay High Court in a group of revision applications, namely, Dossibai

(3) A.I.R. 1971 S.C. 2355.

N. B. Jeejeebhoy Nos. 233 to 242 of 1955—Bom. There arose, however, a sharp conflict of judicial opinion regarding the construction to be placed on section 6(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act and the matter was referred to a Division Bench for resolving the same. Gajendragadkar, J., speaking for the Division Bench in the case reported as *Vinayak Gopal Limaye* v. *Laxman Kashinath Athavale* (4) held that the question whether section 6(1) of the Act applied to any particular lease must be determined on its terms and a building lease in respect of an open plot was not excluded from section 6(1) of the Act solely because open land may be used for residence or educational purposes only after a structure is built thereon.

(9) Relying upon the law laid down in *Vinayak Gopal Limaya's case* (4), Mathura Prasad appellant then filed a fresh application in Court for determining the standard rent of the premises. The trial Judge rejected the application holding that the question whether to an open piece of land let for purposes of constructing building for residence, education, business or trade, section 6(1) of the Act applied was *res judicata* since it had been finally decided by the High Court between the same parties in respect of the same land in the earlier proceeding for fixation of standard rent. This was confirmed by a Bench of the Court of Small Causes and later by the High Court of Bombay. With special leave the appellant appealed to the Supreme Court.

(10) It is worthy of particular notice that meanwhile an appeal was taken against the decision of the Single Judge of the Bombay High Court in Civil Revision application No. 233 of 1955, dated the 28th September, 1955 (Bombay) and in the judgment reported as *Mrs. Dossibai N. B. Jeejeebhoy* v. *Khemchand Gorumal* (5), the view expressed therein was overruled .Their Lordships of the Supreme Court referred with approval to the view expressed earlier in *Vinayak Gopal Limaya's case* (4), and affirmed the ratio thereof. Though the appeal of Mrs. Dossibai was dismissed on another ground, the view of law expressed by the learned Single Judge in Civil Revision application No. 233 earlier was authoritatively and finally set aside.

(11) Their Lordships allowed the appeal in *Mathura Prasad's case* (3) on a two-fold ground, holding that the earlier decision of the

(4) I.L.R. 1965 Bom. 827=A.I.R. 1957 Bom. 94.
(5) A.IR. 1966 S.C. 1939.

Civil Judge that he had no jurisdiction to entertain an application for determination of standard rent was patently erroneous in view of the judgment in *Mrs. Dossibai N. B. Jeejeebhoy* v. *Khemchand Gorumal* (5), and further if this erroneous decision regarding the jurisdiction of the Court was allowed to become conclusive, it would assume the status of a special rule of law applicable to the parties in derogation to the rule declared by the Legislature.

(12) Did their Lordships in *Mathura Prasad's case* (3) intend to lay down an abstract and unqualified proposition that a question of law (and for that matter a pure question of law) between the parties can never be *res judicata* in a subsequent proceedings ? My answer to that query is in the negative. A reference to the body of the judgment discloses that it is in terms an affirmance of the view expressed earlier in the Full Bench case of *Tarini Charan Bhattacharjee and others* v. *Kedar Nath Haldar* (6). Their Lordships have repeatedly referred to it with approval and in fact quoted *in extenso* from the observations of Chief Justice Rankin in the said case. A reference to this judgment reveals that the first question formulated by the referring Division Bench for determination was as follows:—

> "Whether an erroneous decision on a pure question of law operates as *res judicata* in a subsequent suit where the same question is raised."

In the context of the above-said question, Chief Justice Rankin observed as follows:—

> "As regards the first question, I am not of opinion that any categorical answer can be given to the question as framed and I do not think that it would be wise for a full Bench to attempt an exhaustive exposition of all the considerations which are relevant in determining whether a previous decision does or does not operate as *res judicata*."

Elaborating further the learned Chief Justice opined that indeed pure questions of law were of various kinds and could not possibly be dealt with as though they were all the same or absolutely identical. Especially he listed the questions of law regarding procedure; those affecting jurisdiction; and issues of limitation in which apart

(6) A.I.R. 1928 Cal. 777.

from the rights of parties the interest of the public and the Court itself would be equally involved, and for that reason such questions may merit the application of special considerations.

(13) Viewed in the background of the observations in the Full Bench of *Tarini Charan Bhattacharjee's case* (6) (supra) which has been expressly affirmed, the observations *in Mathura Prasad's case* (3) negative any possible assumption that the Supreme Court intended to lay down any blanket rule that pure questions of law can never operate as *res judicata* betwixt the parties. Indeed as held by Rankin C.J., it was neither possible nor desirable to attempt a categorical answer to any such abstruse proposition.

(14) Again what their Lordships have themselves observed in the course of the judgment in *Mathura Prasad's case* (3) negates the argument on behalf of the respondent that a question of law like the interpretation of a statute cannot be *res judicata.* At two places in the judgment it was observed authoritatively in these terms:—

> "A previous decision of a competent Court on facts which are the foundation of the right and the relevant law applicable to the determination of the transaction which is the source of the right is *res judicata.* A previous decision on a matter in issue is a composite decision; the decision on law cannot be dissociated from the decision on facts on which the right is founded. *A decision on an issue of law will be as res judicata in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding,* but not when the cause of action is different, nor when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the Court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law."

and again

> "A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. *But, where the decision is on a question of law, i.e., the interpretation of a statute, it will be*

> *res judicata in a subsequent proceeding between the same parties where the cause of action is the same,* for the expression 'the matter in issue' in section 11, Code of Civil Procedure, means the right litigated between the parties, i.e., the facts on which the right is claimed or denied and the law applicable to the determination of that issue." (emphasis supplied).

It can hardly be disputed that a matter of interpretation of a statute is a question of law and may well fall within the rather slippery and loose expression of "a pure question of law". Nevertheless as noticed above, their Lordships have observed in no uncertain terms that a question of interpretation of a statute also may well become *res-judicata* in a subsequent proceeding between the same parties where the cause of action is the same.

(15) There is then such a long line of authoritative precedents of the Supreme Court bearing directly on this aspect of the doctrine of *res-judicata* that it becomes well-nigh impossible to hold that *Mathura Prasad's case* (3) was intended by their Lordships to take a directly contrary view thereto or to unsettle the previous binding precedents. It is a safe rule of construction that a judgment of the final Court is not implied to overrule its earlier decisions which were not even cited before it. As early as 1953 Ghulam Hasan, J., speaking for the Court in *Mohanlal Goenka* v. *Benoy Kishna Mukherjee and others* (7), laid down as follows :—

> *"There is ample authority for the proposition that even an erroneous decision on a question of law operates as res-judicata between the parties to it.* The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as *res judicata.* A decision in the previous execution case between the parties that the matter was not within the competence of the executing court, evn though erroneous, is binding on the the parties, see *Abhoy Kanta* v. *Gopinath Deb* (8).". (emphasis supplied).

(16) In the two decades that have gone by since the above-said enunciation of the law there has never been a deviation from the

(7) A.I.R. 1953 S.C. 65.

(8) A.I.R. (30) 1943 Cal. 460.

rule laid down herein and indeed the principle has found reiteration at the hands of their Lordships in innumerable decisions. Enunciating the principle underlying the rule it was later observed as follows in *Satyadhyan Ghosal and others*, v. *Smt. Deorajin Debi and another* (9):—

> "The principle of *res-judicata* is based on the need of giving a finality to judicial decisions. What it says is that once a *res* is *judicita*, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. *When a matter—whether on a question of fact or a question of law—has been decided* between two parties in one suit or proceeding and the decison is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed to a future suit or proceeding between the same parties to canvass the matter again." (emphasis supplied).

Again in this very context it is unnecessary to advert in detail to the well-known ratio of the celebrated case of *Daryao and others* v. *State of U.P. and others* (10). In *Devilal Modi* v. *Sales Tax Officer, Ratlam and others* (11), the principle of constructive *res-judicata* was extended in its application to the writ petitions even in the context of the enforcement of fundamental rights with the following authoritative observations by Chief Justice Gajendragadkar speaking for the Court :—

> "As we have already mentioned, though the Courts dealing with the questions of the infringement of fundamental rights must consistently endeavour to sustain the said rights and should strike down their unconstitutional invasion, it would not be right to ignore the principle of *res judicata* altogether in relaing with writ petitions filed by citizens alleging the contravention of their fundamental rights. Considerations of public policy cannot be ignored in such cases, and the basic doctrine that judgments pronounced by this Court are binding and must be regarded as final between the parties in respect of matters covered by them must receive due consideration."

(9) A.I.R. 1960 S.C. 941,
(10) A.I.R. 1961 S.C. 1457:
(11) A.I.R. 1965 S.C. 1150:

Gulabchand Chhotalal Parikh v. *State of Gujarat* (2), which has already been referred to, again reiterated that a decision on merits on a matter after contest given in a writ petition would operate as *res-judicata* in a subsequent regular suit between the same parties with respect to the same matter. It is unnecessary to multiply authorities and it suffices to mention that the rule was again reiterated by a Bench consisting of J. C. Shah and K. S. Hedge, JJ. in *Sri Bhavanarayanaswamiviri Temple* v. *Vadapalli Venkata Bhavanarayana Charyulu* (12). Viewed in the background of the precedents referred above it is manifest that *Mathura Prasad's case* (3) in 1971 was not intended to make any radical departure from the settled law but was indeed a reiteration of the accepted principles of *res-judicata* which had been repeatedly enunciated by their Lordships earlier.

(17) What exactly then is the *ratio decidendi* in *Mathura Prasad's case* ? It is manifest that the sole issue in the appeal was as to the jurisdiction of the Court of Small causes for determining the standard rent of premises constructed in pursuance of a building lease of an open site.

Therefore, the authority is a precedent primarily on the limited issue of the jurisdiction of a Court. What directly arose for determination therein and what has been specifically laid down by their Lordships is—that a patently erroneous decision (directly contrary to a Supreme Court judgment) in a previous proceeding in regard to the jurisdiction of a Court could not become *res judicata* between the parties. The weighty reason for so holding was that such a result would create a special rule of law applicable to the parties in relation to the jurisdiction of the Court in violation of rule of law declared by the legislature. It is manifest that this enunication was an engrafted exception to the general principle noticed in the judgment itself, i.e., a question of law including the interpretation of a statute would be *res judicata* between the same parties where the cause of action is the same. I am inclined to the view that it is unprofitable and indeed unwarranted to extract an observation and a sentence here and there from the judgment and to build upon it on the ground that certain results logically follow therefrom. Such a use of precedent was disapproved by the Earl of Halsbury L. C. in *Quinn* v. *Leathem* (13). Approving that view and quoting extensively therefrom their Lordships of the Supreme

(12) 1970 (1) S.C.C. 673.

(13) 1901 A.C. 495.

Court in *State of Orissa* v. *Sudhansu Sekhar Misra and others* (14) have categorically observed as follows :—

> "A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it."

(18) In strictness, therefore, the *ratio decidendi* of *Mathura Prasad's case* (3) is confined to the issue of jurisdiction of the Court but it is equally well-settled that the *obiter dicta* of their Lordships is entiled to the greatest respect and weight and is indeed binding if it can be found that they intended to lay down a principle of law. The issue, therefore, is as to what else, apart from the ratio, was sought to be laid down by the Supreme Court in this case. The very closely guarded language used by their Lordships in the body of the judgment leads me to conclude that they wished to confine their observations within the narrowest limits. The expression used (which is sought to be extended on behalf of the respondent) is—"a pure question of law unrelated to the right of the parties to a previous suit". It is very significant that their Lordships, with their meticulous precision of language, have nowhere laid down in the judgment that a pure question of law can never be *res judicata* between the parties. Indeed it has been said to the contrary in terms. The emphasis, therefore, in the expression abovesaid is on the fact that such a pure question of law must be unrelated to the rights of the parties. It stands noticed that a decision by a Court on a question of law cannot be absolutely dissociated from the decision on the facts on which the right is founded. Consequently what was exactly to be connoted by the expression "a pure question of law unrelated to the rights of the parties" was itself expounded upon by their Lordships. Without intending to be exhaustive, the Court has indicated specifically the exceptional cases in which special considerations apply for excluding them from the ambit of the general principle of *res judicata*. The principle of law which their Lordships herein have reiterated is that a pure question of law including the interpretation of a statute will be *res judicata* in a subsequent proceeding between the same parties. To this salutary rule, four specific exceptions are indicated. Firstly, the obvious one, that when the

(14) A.I.R. 1968 S.C. 647.

cause of action is different, the rule of *res judicata* would not be attracted. Secondly, where the law has, since the earlier decision, been altered by a competent authority. Thirdly, where the earlier decision between the parties related to the jurisdiction of the Court to try the earlier proceedings, the same would not be allowed to assume the status of a special rule of law applicable to the parties and, therefore, the matter would not be *res judicata*. Fourthly, where the earlier decision declared valid a transaction which is patently prohibited by law, that is to say, it sanctifies a glaring illegality.

(19) Applying the abovesaid rule with its engrafted exceptions, one may now proceed to determine whether the earlier decision in Civil Writ No. 1061 of 1961 was a pure question of law unrelated to the rights of the parties. To my mind, it was patently not so. The matter that was directly and substantially in issue in the writ proceedings was the validity of the order of compulsory retirement dated January 6, 1961. The express prayer for relief in the writ petition was that the order retiring the petitioner compulsorily be set aside as illegal and it be further directed that the petitioner therein did not cease to hold his post under the Government. This specifically is the matter directly and substantially in issue in the subsequent present suit. In terms the relevant claim herein is for a declaration that the order of the Governor of Punjab dated January 6, 1961, compulsorily retiring him was illegal and consequently the plaintiff continued to be in the service of the Punjab Government in his original post. Can it be reasonably said that the earlier decision was one unrelated to the rights of the parties ? A bare reference to the Division Bench judgment in C. W. No. 1061 of 1961 would show that the issue of the validity of the order was one founded upon and inextricably enmeshed with the rights upon which the learned Judges had adjudicated in detail. The issue rested squarely upon facts and rights as also on the interpretation of the service rules applicable to the respondent-employee; the rights of the employee to continue in service; and the power of the employer to determine the same by way of compulsory retirement. Far from being an issue unrelated to the rights of the parties, it was in fact founded on the particular rights of either and equally related to the facts which gave rise to the interpretation and applicability of the relevant rule and the determination of the other question of law. Hence applying the observations of the Supreme Court (on which so much reliance was

placed by the learned counsel for the respondent) one cannot say that the upholding of the same impugned order of compulsory retirement earlier by the Division Bench was a pure question of law un-related to the rights of the parties.

(20) With some ingenuity Mr. Sibal had then attempted to bring his client's case within the exception that a question of law is not *res-judicata* between the parties if the said law has been altered by a competent authority subsequent to the earlier decision. Counsel contended that the Supreme Court in *Gurdev Singh's case* (1) had struck down rule 9.1 of the Pepsu Regulations as unconstitutional and this judgment had hence affected a change in the law applied by the Division Bench in Civil Writ No. 1061 of 1961. Indeed Mr. Sibal has been pushed, by force of logic, into taking up an extreme position and has contended that the moment a Court of record or a superior Court overrules an earlier decision on a point of law or declares a statutory provision as *ultra vires,* then all decisions rendered earlier *inter partes* would become nugatory and the parties thereto would be entitled to re-agitate the issues over again subject to the law of limitation. I am unable to accede to any such radical or startling proposition. Such a result would indeed run counter to the settled principles of *res-judicata* that finality must ultimately attach to a decision of the Court, if not appealed from, irrespective of the correctness of the same. If every *lis* between the parties is liable to be re-opened by a subsequent change of legal opinion, then all earlier litigation relevant thereto would always be in a flux. Learned Counsel for the respondent was repeatedly invited to cite any authority which laid down that the declaration of a statute as *ultra vires* or the overruling of an earlier decision would re-open all the decided matters within the period of limitation flowing from the date of such decision, but he had frankly conceded his inability to cite any judgment in support of his contention. There is, however, high authority to the contrary. Chief Justice Rankin in *Tarni Charan's case* (6) repelled an identical submission in language which is worthy of recapitulation—

> "The legislature, by statute, may alter the rights of parties and when it does so, it makes such provision as it thinks proper to prevent injustice. Courts of law are in no way authorized to alter the rights of parties. They profess, at all events, to ascertain the law, and if the binding

> character of a decision upon a concrete question as to the terms of a particular holding is to fluctuate with every alteration in the current of authority, the Courts will become an instrument for the unsettlement of rights rather than for the ascertainment thereof. The principle relied upon is abhorrent to Section 11, C.P.C. and to the general intention of the doctrine of *res-judicata.*"

In an earlier decision in *Gowri Koer* v. *Audh Koer and others* (15), Chief Justice Garth speaking for the Bench has this to say on the point :—

> "But although those learned Judges may have made a mistake in point of law in the decision at which they arrived in 1873, their decision upon the point at issue is nevertheless a *res-judicata* as between the parties and it is no less a *res-judicata,* because it may have been founded on an erroneous view of the law, or a view of the law which this Court has subsequently disapproved."

In view of the above it has been rightly contended on behalf of the appellant-State that the alteration of the law by the competent authority as an exception in the context of the rule of *res-judicata* means a change enacted by the Legislature and not by virtue of a different interpretation subsequently given by the Court. The Courts of record including the Supreme Court only interpret the law as it stands but do not purport to amend the same. Their Lordships' decisions declare the existing law but do not enact any fresh law.

(21) Lastly it was contended on behalf of the respondent that the earlier decision of the Division Bench in the Civil Writ was erroneous on the point of the validity of rule 5.32 of the Punjab Civil Services Rules, and therefore could not remain binding between the parties. Reliance was placed on *Gurdev Singh's case* (1) to show that a provision in *pari materia* with the said rule in Article 9.1 of the Pepsu Regulations had been held unconstitutional and on a parity of reasoning rule 5.32 may also be not sustainable. There is obviously no merit in this contention because the hallowed and unchallenged rule is that the correctness or otherwise of a previous judicial decision has no bearing upon the question whether

(15) I.L.R. 10 Cal. 1087.

or not it operates as *res-judicata*. Once it is found that the rule is attracted, then the correctness or otherwise of the earlier decision is irrelevant to the issue.

(22) For the foregoing reasons my answer to the question formulated for determination is in the affirmative.

(23) The case will now go back to the Division Bench for decision.

(24) TULI, J.—I agree and have nothing to add.

M. R. SHARMA, J.—(25) With utmost respect to my learned brother S. S. Sandhawalia, J., I have not been able to concur with the view taken by him.

(26) The respondent joined the service of the erstwhile State of Patiala as officiating Octroi Moharrir in May, 1941. After the formation of the Patiala and East Punjab States Union (hereinafter referred to as Pepsu) on August 20, 1948, he was integrated in the service of the Pepsu and promoted as an Assistant with effect from October 6, 1955. He was confirmed in this post on September 1, 1956, and after the merger of Pepsu with the erstwhile State of Punjab, he was taken up as an Assistant in the Punjab Civil Secretariat, Chandigarh, with effect from November 1, 1956. Sometime in August, 1960, the Additional Chief Secretary to the Government of Punjab served a notice upon the respondent to show cause why he be not compulsorily retired from service under rule 5.32 of the Punjab Civil Services Rules, Volume II. In reply, the respondent wrote to the said officer that he should be given an opportunity of explaining things personally, because he was likely to level some allegations against his superior authorities. It is alleged that no such opportunity was given to him and *vide* orders dated January 6, 1961, which were communicated to him on January 16, 1961, he was compulsorily retired from Government service. He filed a suit in the Court of Subordinate Judge, First Class, Patiala, on the ground that his compulsory retirement under the impugned orders tantamounted to his removal or dismissal from service within the meaning of Article 311 of the Constitution inasmuch as his services had been terminated on allegations of misconduct, inefficiency, slackness and malingering. It was also alleged that the rule relating to compulosry retirement, which had been invoked in his case, was hit by Article 311(2) of the Constitution.

(27) In the written statement filed on behalf of the State, some preliminary objections were taken. It was submitted that the matter involved was not justiciable and that the suit was barred under section 11 of the Code of Civil Procedure because the writ petition filed by the respondent relating to the 'point in issue' had been dismissed by the Punjab High Court. The other material plea which appears in para 6(c) of the written statement is reproduced as under :—

> "The correctness of the contents of this para is denied. The correct position is that the amendment of Rule 5.32 of the Punjab Civil Service Rules, Volume II, was made with the concurrence of the Government of India to whom a reference was made under section 115 of the State Reorganisation Act. Accordingly the amended rules applied to all Punjab Government servants, including those of the erstwhile Pepsu. So far as the plaintiff is concerned he definitely opted for the Pension Rules etc. as contained in the Punjab Civil Services Rules, Volume II, as amended up to 24th March, 1958 (copy attached). Accordingly, the petitioner cannot in any case urge that the rule regarding compulsory retirement after 10 years of qualifying service is not binding on him. The changes made in rules after his appointment are binding on the plaintiff as he continued to serve the defendant under amended rules of service. The amended up-to-date rules of service constituted the contract of service between the plaintiff and the defendant."

(28) The learned trial Court framed the following issues :—

(1) Whether the Civil Courts at Patiala have territorial jurisdiction to try the suit ?

(2) Whether the matter in question is not justiciable ?

(3) Whether the suit is barred by *res judicata* ?

(4) Whether the order dated 6th January, 1961, of the compulsory retirement of the plaintiff is illegal, void, without jurisdiction, inoperative, *mala fide,* unconstitutional and unauthorised. If so, with what effect ?

(5) Whether the notice under section 80, Civil Procedure Code, is invalid ?

(6) Whether the plaintiff is entitled to the amount in suit ?

(7) Whether the plaintiff is entitled to interest as claimed ?

(8) Relief.

All the issues were decided in favour of the respondent and his claim for Rs. 13,649.08 was decreed. The State of Punjab was also ordered to pay interest at the rate of 6 per centum per annum on this amount from June 10, 1964, till the date of realisation of this amount by the respondent.

(29) The State of Punjab has come up in appeal against this judgment solely on the ground that Civil Writ No. 1061 of 1961 filed by the respondent had been dismissed by a Division Bench of this Court on February 5, 1962, and so the suit filed by the respondent was barred by the principle of *res judicata*.

(30) When the matter came up for hearing before the Division Bench, it was argued on behalf of the respondent that a decision on a pure question of law unrelated to facts, which gave rise to a right could not be deemed to be the matter in issue and such a decision could not operate as *res judicata* in subsequent litigation. Since this point was likely to be raised in a large number of cases, the following question of law was referred to the Full Bench for its opinion :—

> "Whether the decision of the High Court declining to issue a writ of *mandamus* on the assumption that a statutory rule was valid operates as *res judicata* in a subsequent suit instituted after the statutory rule had been declared as unconstitutional by the Supreme Court of India ?"

(31) I deem it necessary to observe at this stage that the present suit was filed on February 24, 1964, and *Gurdev Singh Sidhu* v. *The State of Punjab and another* (1) was decided on April 1, 1964, i.e., after the institution of this suit. However, *Moti Ram Deka* v. *General Manager, North-East Frontier Railway* (16), upon which reliance had been placed in *Gurdev Singh's case* (1) (*supra*), was decided on December 5, 1963, In other words, the principle on the basis of which second proviso to Article 9.1 of the Pepsu Services Regulations, Volume I (hereinafter called the Pepsu Regulations) was declared illegal as being opposed to Article 311 of the Constitution, had been settled earlier. Even otherwise, this Court had taken the view that

(16) A.I.R. 1964 S.C. 600.

dismissal of a writ petition on merits did not bar a regular suit on the same cause of action. This view was, for the first time, over-ruled in *Gulabchand Chhotalal Parikh* v. *State of Gujarat* (2) which was decided on December 14, 1964. Even if the decision in *Gurdev Singh's case* (1) (*supra*) had come during the pendency of the suit, the learned trial Court was bound to take judicial notice of subsequent events which in this case was the law declared by the Supreme Court, which is binding on all the subordinate Courts as laid down in Article 141 of the Constitution. The date of the institution of the suit, therefore, bears no relevance to the principle of law involved in this case.

(32) In Civil Writ No. 1061 of 1961, *Shri Nand Kishore Vaid* v. *Punjab State and another,* filed by the respondent, he had urged that his case was governed by Article 9.1 of the Pepsu Regulations, the first proviso to which laid down that the Government could retire a Government servant after he had completed a qualified service of 25 years and the Government could not assume the power to compulsorily retire a servant after he had completed ten years of service by amending the rules. It was also averred that the Government could not affect the position of its existing Government servants by any unilateral action without obtaining the consent of the Government servants concerned to the changed conditions. Second proviso to Article 9.1 of the Pepsu Regulations introduced by a notification issued on January 19, 1960, reads as under :—

> "Provided further that Government retains an absolute right to retire any Government servant after he has completed ten years qualifying service without giving any reason and no claim to special compensation on this account will be entertained. This right will not be exercised except when it is in the public interest to dispense with the further services of a Government servant such as on account of inefficiency, dishonesty, corruption or infamous conduct. Thus, the rule is intended for use....."

(33) Rule 5.32 of the Punjab Civil Services Rules, Volume II, incorporates the conditions of grant of pension to the retiring Government servants. This rule was amended on November 27, 1957. The new rule provided that a retiring Government servant, if permitted to retire from service after completing qualifying service of 25 years or such less time as may for any special class of Government servants be prescribed, would be eligible to receive pension. Note 1

appearing under this rule was worded in exactly the same manner in which the second proviso to Article 9.1 of the Pepsu Regulations was worded. It appears that rule 5.32 of the Punjab Civil Services Rules, Volume II, had been amended earlier and the Pepsu Regulations were amended in 1960 so as to bring the two provisions at par. In this view of the matter, it would make no difference whatsoever whether the service of the respondent had been terminated under second proviso to Article 9.1 of the Pepsu Regulations or under Note 1 appearing under rule 5.32 of the Punjab Civil Services Rules, Volume II. The controversy which the High Court was called upon to resolve in Civil Writ No. 1061 of 1961 was whether a public servant could be compulsorily retired in exercise of powers under a service rule which allowed the Government to retire him after he had put in ten years of service. The Division Bench which decided this petition on February 5, 1962, observed as under :—

> "No principle or authority has been cited in support of this submission, nor has the counsel drawn our attention to any provision of law which confers on the petitioner the right to continue in service if the State does not require his services any more. There is of course no binding agreement conferring any such right on the petitioner, at least none was pointed out to us. Without a binding precedent or other convincing argument, I cannot persuade myself to quash the impugned order as contrary to law and unauthorised on the basis of this submission. It has next been submitted that rule 9.1 of the Pepsu Regulations contained in Chapter IX as it existed before the Notification of 1960, by which the power to retire compulsorily after 10 years of service was included in the rules, governs the present case and in the background of this rule compulsory retirement before 25 years of service must be considered to amount to wrongful removal, hit by Article 311 of the Constitution. This contention ignores the notification of 30th September, 1957, by means of which it had become permissible to compulsorily retire a person after 10 years of service. When once it is held that the petitioner had opted for being governed by the Punjab Civil Services Rules, Volume II as amended up to 24th March, 1958, there can scarcely be any question of Pepsu Rule 9.1 operating to the exclusion of the Punjab Rules. As a matter of fact, the amended Punjab Rules would also seem to meet the

petitioner's second point already disposed of. This rule does clearly contemplate the existence of power in the Government to retire the petitioner compulsorily after 10 years of service."

Apparently, the Division Bench held that Article 311 of the Constitution was not attracted because Article 9.1 of the Pepsu Regulations had been amended and even if rule 5.32 of the Punjab Civil Services Rules, Volume II was applied to the case of the respondent that would also meet the point raised on his behalf. The case was not decided on the basis that, where, while reserving the power to the State to compulsorily retire a public servant a rule is framed prescribing a proper age of superannuation and another rule is added giving the power to the State to compulsorily retire a permanent public servant at the end of 10 years of his service, that rule would be violative of Article 311(2) of the Constitution. In other words, whether it was second proviso to Article 9.1 of the Pepsu Regulations or Note 1 to rule 5.32 of the Punjab Civil Services Rules, Volume II, the same was presumed to be valid and the retirement of the respondent under any of these constitutionally invalid provisions was held to be valid. The Division Bench also observed that under Article 310 of the Constitution, the tenure of office of persons serving the State was subject to the pleasure of the Governor. This pleasure was of course subject to Article 311 but a show-cause notice was required to be given to a Government servant in case he was to be dismissed, removed, or reduced in rank only. The compulsory retirement of a Government servant did not *per se* amount to removal, and so the petition of respondent was dismissed.

(34) In *Moti Ram Deka's case* (16) (*supra*), the Court was called upon to consider the invalidity of rules 148(3) and 149(3) of the Railway Rules. These Rules authorised the termination of services of the railway employees by serving them a notice for a requisite period or paying them their salary for the said period in lieu of notice. The Court held that a person who substantively held a permanent post had a right to continue in service subject to two exceptions : (i) superannuation and (ii) compulsory retirement. The second exception was affirmed by the Court with the reservation that rules of compulsory retirement would be valid if, having fixed proper age of superannuation, they permit the compulsory retirement of a public servant; provided he has put in the minimum period of service. The Court observed that if the compulsory retirement permitted the

authority to retire a public servant at a very early stage of his career, the question whether such a rule would be valid might have to be considered on a proper occasion. In *Gurdev Singh's case* (1) (*supra*), the Court had to consider the validity of second proviso to Article 9.1 of the Pepsu Regulations. It relied upon *Moti Ram Deka's case* (16) (*supra*) and observed as under :—

> "Therefore, it seems that only two exceptions can be treated as valid in dealing with the scope and effect of the protection afforded by Article 311(2). If a permanent public servant is asked to retire on the ground that he has reached the age of superannuation which has been reasonably fixed, Article 311(2) does not apply, because such retirement is neither dismissal nor removal of the public servant. If a permanent public servant is compulsorily retired under the rules which prescribe the normal age of superannuation and provide for a reasonably long period of qualified service after which alone compulsory retirement can be ordered, that again may not amount to dismissal or removal under Article 311(2) mainly because that is the effect of a long series of decisions of this Court. But where while reserving the power to the State to compulsorily retire a permanent public servant, a rule is framed prescribing a proper age of superannuation, and another rule is added giving the power to the State to compulsorily retire a permanent public servant at the end of 10 years of his service, that cannot, we think, be treated as falling outside Article 311(2). The termination of the service of a permanent public servant under such a rule, though called compulsory retirement, is in substance, removal under Article 311(2)."

It does not need elaborate arguments to hold that the Service Rules must be held to be void if they come in conflict with Article 311 of the Constitution. These Rules are framed under Article 309 of the Constitution, the opening words of which are "subject to the provisions of this Constitution"....., which implies that these Rules must not come in conflict with any constitutional provision. It is precisely for this reason that second proviso to Article 9.1 of the Pepsu Regulations and Note. 1 to rule 5.32 of the Punjab Civil Services Rules, Volume II, were suitably amended on May 31, 1965, and the Government was empowered to compulsorily retire its servants soon after they had put in 25 years of service.

(35) In view of the above observations made in *Gurdev Singh's case* (1) (supra), the decision in C.W. No. 1061 of 1961 filed by the respondent must be deemed to have been over-ruled. The period for which the respondent had served the Government was never in dispute at any stage. It was agreed and indeed it is a matter of fact that he had put in less than 25 years of service when the orders of his compulsory retirement were passed. If the judgment given in that petition is allowed to stand in the way of the respondent, then the following consequences would ensue:—

Firstly, the decison of the High Court on a pure question of law unrelated to facts, i.e., the right of the Government to retire its servant under either second proviso to Article 9.1 of the Pepsu Regulations or under Note. 1 appearing under rule 5.32 of the Punjab Civil Services Rules, Volume II, would have to be regarded as binding on him.

Secondly, the respondent would be deemed to be governed by a service rule which was not only different from the rules governing other public servants but which had also been held void by the highest Court of the land. In other words an unconstitutional rule would have to be clothed with validity by a judicial process.

Thirdly, the principle that a decision based on law which is subsequently altered or amended does not operate as *res judicata* would have to be given a complete go by in the case of the respondent.

Can it be done? To answer this question, one has to understand the true ambit and the scope of the principle of *res judicata* enshrined in section 11 of the Code of Civil Procedure. Shorn of surplusages this section reads as under:—

"No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

This section is based upon two maxims of common law—

(i) *interest reipublicae ut sit finis litium*—it concerns the State that there be an end to law suits.

(ii) *nemo debet bis vexari pro una et eadem cause*—no man should be vexed twice over for the same cause.

But for the rule contained in this section, there would be no end to litigation and the rights of litigants would be involved in endless confusion.

(36) Apart from this, there are some other principles which have acquired statutory recognition in the Code of Civil Procedure (hereinafter called the Code). One such principle has been enunciated in *Sangram Singh* v. *Election Tribunal, Kotah, and another* (17) in the following terms:—

> "Now a code of procedure must be regarded as such. It is 'procedure' something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should, therefore, he guarded against (provided always that justice is done to 'both' sides) lest the very means designed for the furtherance of justice be used to frustrate it."

In *Mehar Chand* v. *Mulkhi Ram and others* (18), it was observed as under:—

> "The Code of Civil Procedure is an adjective law as opposed to substantive law and is not primarily intended to create new rights or to take away existing rights. Its main function is to provide and regulate the procedure of the Courts for enforcing the rights of the parties."

In *Thakar Lal* v. *Nathulal and others* (19), it was stated thus—

> "It would be a grave mistake therefore if we may say so with utmost deference, to forget that it deals with procedural

(17) A.I.R. 1955 S.C. 425.
(18) A.I.R. 1932 Lah. 401.
(19) A.I.R. 1964 Raj. 140.

matters, that is, with matters relating to the machinery for the enforcement of substantive rights, as contra-distinguished from the substantive rights themselves. As to the latter rights, we must look elsewhere, that is, to the statute law or the general principles of law. Indeed, even in matters relating to procedure, it seems to us to be recognised that all procedure should be accepted to be permissible unless it is prohibited by the Code of Procedure either expressly or by necessary implication."

(37) Procedural law is the hand-maid of justice and if the provisions of a statute are capable of two interpretations, the one which advances the interests of justice should be adopted.

(38) The other principle which is worthy of mention is that an act of Court shall prejudice no man. Under this principle, a Court of law is entitled to correct its own mistakes apart from the statutory jurisdiction conferred upon it to correct any error committed by it in the course of a trial. Under this very principle, a Court would be deemed to have a power to interpret laws in such a manner that its power to correct its own errors could be freely exercised in the absence of anything to the contrary in a statute.

(39) All the three principles enunciated above have a pride of place in our system of laws. Each one of them may have individual area of operation but cases also arise in which a Court is called upon to draw upon more than one of them. In that event, the Court is under a duty to read them harmoniously and to strike a happy balance between them. It is settled law of the pleadings that a party to a cause has to plead facts leaving it to the Court to apply the principles of law. If a decision is given on a mixed question of law and facts, then it cannot be reopened because it is in the interest of all concerned that there should be some finality to the litigation and nobody should be vexed again over the same cause. The Court cannot be blamed because the facts have to be proved by the parties and the law has to be interpreted in the background of these facts. But if a wrong decision on a pure question of law is given, then really speaking it is the Court itself which is to be blamed. If finality is attached to such a decison then the principle that the act of a Court shall injure nobody would have to be ignored. In such a situation, justice may have to be denied to an aggrieved party because of mere technicalities of procedural law.

Again, where a Court has no jurisdiction to decide a matter the decision given by it could not be regarded as binding in subsequent proceedings. Otherwise, a Court would be arrogating to itself a power to create jurisdictions instead of exercising them in accordance with the mandate given by the Legislature.

(40) A Court discovers law and does not lay it down. When law is changed by the competent authority, it cannot insist that the decision given by it on the basis of old law should be regarded as sacrosanct.

(41) In *Mathura Prasad Sarjoo Jaiswal and others* v. *Dossibai N. B. Jeejeebhoy* (3), the controversy arose out of the following facts. The appellant had acquired lease of vacant site from the respondent for constructing buildings for residential or business purposes. He filed a petition under section 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter called the Bombay Act), for determining the standard rent. The Civil Judge rejected the application holding that the provisions of this Act did not apply to open land let for constructing buildings for residential and business purposes. This order was confirmed by a learned Single Judge of the Bombay High Court in a group of revison petitions (Nos. 233 to 242 of 1955) *Mrs. Dossibai N. B. Jeejeebhoy* v. *Hingoo Manohar Missar,* but in another case reported as *Vinayak Gopal Limaye* v. *Laxman Kashinath Athayale* (4), the Court held that the question whether section 6(1) of the Bombay Act applies to any particular lease must be determined on its terms and a building lease in respect of an open plot is not excluded from section 6(1) of this Act. Relying upon *Vinayak Gopal's case* (4) (supra), the appellant filed a fresh petition in the Court of Small Causes Bombay for an order determining the standard rent of the premises. This application was dismissed by the Court on the ground that the same was barred by the principle of *res judicata.* This order was confirmed by the Bombay High Court. In the meantime the view expressed by the Bombay High Court in Civil Revision Application No. 233 of 1955 was over-ruled by the Supreme Court in *Mrs. Dossibai N. B. Jeejeebhoy* v. *I. Khemchand Gorumal* (5). The appellant approached the Supreme Court with special leave. The Court observed as under:—

> "A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue. When it is said that a previous decision is *res judicata,* it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent Court on facts which

are the foundation of the right and the relevant law applicable to the determination of the transaction which is the source of the right is *res judicata*....."

"A question relating to the jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of the Court. If by an erroneous interpretation of the statute the Court holds that it has no jurisdiction, the question would not, in our judgment, operate as *res judicata*. Similarly by an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute the question cannot operate as *res judicata* between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise."

"Where, however, the question is one purely of law and it relates to the jurisdiction of the Court *or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata* a party affected by the decision will not be precluded from challenging the validity of the order under the rule of *res judicata*, for a rule of procedure cannot supersede the law of the land."

"If the decision in the previous proceeding be regarded as conclusive it will assume the status of a special rule of law applicable to the parties relating to the jurisdiction of the Court in derogation of the rule declared by the Legislature."

(Emphasis supplied).

(42) In my humble opinion, these observations provide an excellent illustration how the three principles of procedural law mentioned above should be read and applied in a harmonious manner. If the principles enunciated in *Mathura Prasad's case* (3) (supra) are applied to the instant case, it becomes obvious that the decison given in C.W. 1061 of 1961 cannot operate as *res judicata*. The decision whether second proviso to Article 9.1 of the Pepsu Regulations or Note. 1 appearing under rule 5.32 of the Punjab Civil Services Rules Volume II, could be validly invoked to justify the order of compulsory retirement was a decision on a pure question of law unrelated to facts. These rules could not be held constitutional in the case of the petitioner and unconstitutional *qua* all other public servants. After the decision of the Supreme Court in *Mathura Prasad's case* (3) (supra) these rules would have to be considered as non-existent. Some

rule which does not exist cannot form the basis of a binding judgment. In *Niranjan Singh* v. *State of Madhya Pradesh* (20), it was held that the principle of *res judicata* is inapplicable to a fundamentally lawless order. Furthermore, after the highest Court of land had declared these rules to be invalid, the High Courts were bound to take notice of this declartion even *qua* past transactions. Otherwise, they would be arrogating to themselves the power of prospective over-ruling, which, according to the pronouncements made in *I. C. Golak Nath and others* v. *State of Punjab and another* (21), lies solely within the domain of the Supreme Court.

(43) Even on behalf of the appellant, it has not been disputed that a wrong decision on the point of jurisdiction of a Court cannot operate as *res judicata*. *Mathura Prasad's* case (supra) is a clear authority for this proposition. In that case, the Civil Judge had held that the Bombay Act did not apply to open land let for constructing buildings for residential and business purposes. Under that Act, the application for fixation of standard rent also lay before the Court of Small Causes. It is, therefore, obvious that the Civil Courts were charged with the duty of administering the provisions of the Bombay Act. When the Civil Judge held that section 6(1) of the Bombay Act did not apply to open land let for constructing buildings, the decision rendered by him was regarded as a decision touching the jurisdiction of the Court. In the instant case, the decision given in C.W. No. 1061 of 1961, has laid down that a Government servant could be retired under second proviso to Article 9.1 of the Pepsu Regulations or under Note. 1 to rule 5.32 of the Punjab Civil Services Rules Volume II. On a parity of reasoning, it must be held that the decision in that writ petition related to the jurisdiction of the Court. A wrong decision on this point could not operate as the bar of *res judicata*.

(44) For the reason mentioned above, I would answer the question referred to the Full Bench in the negative.

By the Court.

(45) By majority the answer to the question referred to the Full Bench for decison and as formulated in the opening part of the judgment of Sandhawalia, J., is returned in the affirmative. The case will now go back to the Divison Bench for decision

K. S. K.

(20) A.I.R. 1972 S.C. 2215.

(21) A.I.R. 1967 S.C. 1643.