Nawal Kishore Dubey v. *State of Rajasthan*, (3) which are quoted hereunder:—

> "Normally, it is desirable not to retire a Government servant compulsorily even under Rule 244(2) if he is under suspension on a charge of misconduct and an enquiry is pending against him, but, if such an order is passed and is not tainted with malice, it cannot be said that it would be illegal having been hit by the provisions of Rule 56(b). Rule 56(b) lays down that a Government servant under suspension on a charge of misconduct should not be permitted to retire on reaching the date of compulsory retirement. This would mean that if a certain Government servant reaches the date of compulsory retirement, which can only be the date on which he attains the age of superannuation, he should not be permitted to retire, if he is under an order of suspension and a departmental inquiry is proceeding against him."

The matters discussed in the observations above are neither apt nor applicable to the facts of the present case and are thus of no avail to the respondent-State. Having regard, therefore, to the circumstances of the present case and the principles of law governing the matter as discussed above, there is no escape from the conclusion that the impugned order (Annexure P-4) was penal in nature particularly in the context of it having been passed during the subsistence of the order of suspension whereby the petitioner was deprived of the full pay and allowances which he would otherwise have been entitled to. The order thus attracts the provisions of Article 311 of the Constitution and is rendered illegal thereby. The impugned order (Annexure P-4) is accordingly hereby quashed with the further direction that the petitioner shall be entitled to such consequential benefits as may be available to him under the law. This writ petition is thus accepted with costs. Counsel's fee Rs. 300.

N.K.S.

Before I. S. Tiwana, J.

MANJIT SINGH,—*Appellant.*

versus

MRS. SAVITA KIRAN,—*Respondent.*

F.A.O. No. 212-M of 1980.

December 1, 1982.

Hindu Marriage Act (XXV of 1955)—Section 25—Wife entering into an agreement with her husband foregoing her right to maintenance—Such agreement—Whether could be said to be invalid on the ground that it offends public policy.

(3) AIR 1967 Rajasthan 82.

Held, that a bare reading of section 25 of the Hindu Marriage Act, 1955 discloses that it confers no absolute right on any of the spouses to maintenance or permanent alimony at the time of passing a decree under the Act. In the given facts and circumstances of a case, the Court may decline to grant the maintenance, if claimed by any of the parties. If that is the legal position or implication of the section then a spouse for the same very reasons may throw away his or her right to maintenance by entering into an agreement with the other. If the Court comes to the conclusion that a wife who makes an application under section 25 of the Act is possessed of enough means or is financially affluent the Court may decline to grant maintenance or permanent alimony in her favour at the time of granting a decree for divorce. If that can be the position why cannot a wife having the same affluent means barter away her right to claim maintenance through an agreement. Such an agreement violates no provision o f law nor any public policy. The provisions of section 25 are only enabling; enabling a court as well as the applicant to seek maintenance in accordance with the same. (Para 2).

Hirabai *vs.* Pirojshah, A.I.R. 1945 Bombay 537.

DISSENTED FROM:

First Appeal from the order of Sardar Jai Singh Sekhon, District Judge, Jullundur, dated 29th August, 1980, ordering that as the petitioners has to maintain and educate her minor daughter, it is considered proper that Rs. 150.00 per month as maintenance would meet the ends of justice. So the said amount is awarded as maintenance under Section 25 of the Hindu Marriage Act to the petitioner.

I.S. Saini, Advocate, *for the Appellant.*

Sarjit Singh, Advocate, *for the Respondent.*

JUDGMENT

I. S. Tiwana, J. (Oral)

(1) The marriage of the parties to this litigation was dissolved by a decree of divorce on October 4, 1978. The respondent-wife moved an application on September 13, 1979 under section 25 of the Hindu Marriage Act, 1955 (for short, the Act) for the grant of permanent alimony and as a result thereof she has been granted Rs. 150 per month as maintenance till the time of her death or she remarriages. The case of the appellant was that as a matter of fact during the pendency of proceedings under section 9 of the Act initiated by him, the parties had come to a settlement in the form

of an agreement (R. 1) whereby the appellant had foregone his rights to claim the custody of the child (admittedly a daughter was born to the parties as a result of their wedlock) and the respondent-wife had relinquished all her right of maintenance under section 125, Cr. P. C. and section 25 of the Act. The execution of this agreement is not in dispute. It is only its validity which is seriously being disputed. The learned lower Court has absolved the respondent of her liabilities under the agreement on the ground that the same was void as the matter was violative of a public policy, which according to the Court is to grant maintenance in favour of wife. For this conclusion, the lower Court has primarily depended on a judgment of the Bombay High Court in *Hirabai* v. *Pirojshah*, (1), wherein it is said while considering the implications of section 40 of the Parsi Marriage and Divorce Act, 1936 that "section 40 is based on ground of public policy and based directly on the principle of not allowing parties whose marital ties are severed to become a burden on the charitable institutions of the community like the Parsi Panchayat who are really the guardians of Poor Relief of the community. The wife's right to future alimony under section 40 after dissolution of marriage is a matter of public concern which she cannot barter away."

(2) After hearing the learned counsel for the parties at some length, I find it difficult to reconcile with the ratio of the above-noted judgment of the Bombay High Court and the conclusion of the lower Court. The test as to when an agreement can be said to be violative of public policy has been so well enunciated by the Supreme Court in *Lachoo Mal* v. *Radhye Shyam* (2), in the following words:—

> "What makes an agreement, which is otherwise legal, void is that its performance is impossible except by disobedience of law. Clearly no question of illegality can arise unless the performance of the unlawful act was necessarily the effect of an agreement."

A bare reading of section 25 of the Act discloses that it confers no absolute right on any of the spouses to maintenance or permanent alimony at the time of passing of a decree under the Act. In the given facts and circumstances of a case, the Court may decline

(1) AIR 1945 Bombay 537.
(2) AIR 1971 S.C. 2213.

to grant the maintenance, if claimed, to any of the parties. If that is the legal position or implication of the section then a spouse may for the same very reasons may throw away his or her right to maintenance by entering into an agreement with the other. Even the learned counsel for the respondent concedes that in case the Court comes to a conclusion that a wife who makes an application under section 25 of the Act is possessed of enough means or is financially affluent the Court may decline to grant maintenance or permanent alimony in her favour at the time of granting of a decree for divorce. If that can be the position why cannot a wife having the same affluent means barter away her right to claim maintenance through an agreement. To my mind, the entering into an agreement of the type, the one (R. 1) has been entered into between the parties, violates, no provision of law nor any public policy. As already indicated, the provisions of section 25 are only enabling; enabling a Court as well as the applicant to seek maintenance in accordance with the same.

(3) For the reasons recorded above, I allow this appeal and set aside the order of the trial Court and disentitle the respondent-wife from any maintenance or alimony in view of the agreement Ex. R. 1 which she entered into with the appellant. No costs.

N.K.S.

Before S. S. Sandhawalia, C.J. & S. S. Kang, J.

ASSISTANT EXCISE & TAXATION COMMISSIONER, FEROZEPORE and another,—*Appellants.*

versus

M/S. LAXMI ELECTRIC COMPANY, FAZILKA,—*Respondent.*

Letters Patent Appeal No. 246 *of* 1980.

December 6, 1982.

Punjab General Sales Tax Act (XVI of 1948)—*Sections* 4, 5(2), 6 *and Schedule 'B' Item* 34—*Monoblock centrifugal pump—Whether an agricultural implement—Such pumps—Whether covered by Item* 34 *Schedule 'B' and exempt from sales tax.*

Held, that section 4 of the Punjab General Sales Tax Act, 1948 is the charging provision and this section provides that sales-tax is