PETITIONER:
BHAGAT RAM SHARMA

Vs.

RESPONDENT:
UNION OF INDIA & ORS

DATE OF JUDGMENT13/11/1987

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
RAY, B.C. (J)

CITATION:
1988 AIR 740 1988 SCR (1)1034
1988 SCC Supl. 30 JT 1987 (4) 476
1987 SCALE (2)1097

ACT:
Claim for pension-Under Regulation 8(3) of the Punjab State Public Service Commission (Conditions of Service) Regulations, 1958 and proviso to sub-section (1) of section 6B of the Himachal Pradesh Legislative Assembly (Allowances & Pension of Members) Act, 1971.

HELD:
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The appellant was elected from the Kangra district West General Constituency, as a member of the Punjab Legislative Assembly in the elections held in 1937 and 1946. By virtue of section 5 of the Punjab (Provincial Legislature) Order, 1947, he became a member of the Join Panjab Legislative Assembly. He continued to be a member of the Joint Punjab Legislative Assembly as he had contested election again after the Assembly was dissolved in June, 1951. On January 3, 1953, he was appointed a member of the Punjab State Public Service Commission and retired as such on January 2, 1959.

The district of Kangra was transferred to the new State of Punjab formed under the States Reorganisation Act, 1956, w.e.f.November 1, 1956. Thereafter, the Kangra district was added to the Union Territory of Himachal Pradesh w.e.f. November 1, 1966. Himachal Pradesh was established as a State w.e.f. January 25, 1971, and the Kangra West General Constituency from which the appellant had been elected all along, stood transferred to the State of Himachal Pradesh, and he was deemed to have been elected to the Legislative Assembly of Himachal Pradesh-under the provisions of the State of Himachal Pradesh Act, 1970.

The appellant made representations both to the Chief Ministers of Punjab and Himachal Pradesh for the grant of pensionary benefits to him either as a member of the Punjab State Public Service Commission or as a member of the State Legislative Assembly. The State Government of Punjab replied that the appellant could not be granted pension as a retired member of the Punjab State Public Service Commission. The State government of Himachal Pradesh replied that the appellant was not eligible to pension under the provisions of the State of Himachal Pradesh Act.

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The appellant then moved the High Court of Punjab and Haryana for relief by a Writ Petition. The High Court partly allowed the writ petition and ordained the State government of Punjab to pay a monthly pension (of Rs.400 to the appellant as a retired member of the Punjab State Public Service Commission, under Regulation 8(3) of the Punjab State Public Service Commission (conditions of service) Regulations, 1958, with effect from August 10,1972-the date when the said provision was introduced. The appellant's claim for pension w.e.f. January 2, 1959-the date of his retirement-was disallowed. His claim for pension as a member of the State Assembly under the provisions of the Himachal Pradesh Legislative Assembly (Allowances and Pension of Members) Act, 1971, was also disallowed on the ground that no part of the cause of action against the State of Himachal Pradesh arose within the territorial jurisdiction of the High Court of Punjab & Haryana under Article 226 of the Constitution. The appellant appealed to this Court by Special Leave against the order of the High Court.

Dismissing the appeal, the Court,

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HELD: 1. It is extremely doubtful whether the appellant can claim pension as a member of the State Legislative Assembly from the State of Punjab in view of the constitutional changes brought about. The Kangra West General Constituency from which the appellant was elected to the Punjab Legislative Assembly and later to the Joint Punjab Legislative Assembly, is by reason of sub-section (2) of Section 10 of the State of Himachal Pradesh Act, 1970, deemed to be a constituency of the Legislative Assembly of the State of Himachal Pradesh. The liability to pay pension to a member of the State Legislative Assembly elected from a constituency which now forms part of the Legislative Assembly of the Himachal Pradesh, cannot possibly be saddled on the State of Punjab.[1043D-F]

2. As regards the liability of the State of Himachal Pradesh to pay pension to the appellant under section 6B (1), read with the second proviso, of the Himachal Pradesh Act, the High Court has rightly declined to grant relief as no part of the cause of action arose within its territorial jurisdiction under Art. 226 of the Constitution; the Himachal Pradesh Act is operative within the territories of the State of Himachal Pradesh. No interference with the judgment of the High Court, dismissing the Writ Petition against the State of Himachal Pradesh is called for. [1043F-G]

3. The claim of the appellant that he was entitled to pension, as a

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retired member of the Public Service Commission, from January 2, 1959-the date of his superannuation-and not August 10, 1972-the date when Regulation 8(3) of the Punjab State Public Service Commission (Conditions of Service) Regulations, was introduced, cannot be accepted. [1044G-H]

OBSERVATION: The appellant clearly answers the description of a Member as defined in section 2(c) of the State of Himachal Pradesh Act. Admittedly, he had continuously been a Member of the State Legislative Assembly, representing the Kangra West General Constituency from the year 1937 to January 2, 1953, on which date he resigned his membership from the Joint Punjab Legislative Assembly to assume the office of a Member of the Punjab State Public Service Commission. Thus, the appellant had been a member of the State Legislative Assembly for a period

of about 16 years, and his case appears to be covered by section 6B (1)(a) and (e) of the State of Himachal Pradesh Act, read with its second proviso. There is no provision in the Himachal Pradesh Act which disentitles a member to the benefit of the period during which he was a member of the State Legislative Assembly prior to the partition of the country. In accordance with the view taken by this Court in D.S. Nakara & Ors. v. Union of India, [1983] 2 SCR 165-the appellant would prima facie be entitled to the benefit of section 6B (1) read with the second proviso of the Himachal Pradesh Act. In view of this position, the appellant is at liberty to move the State Government of Himachal Pradesh afresh for the grant of pension under section 6B(1) of the Himachal Pradesh Act, read with the second proviso, failing which, he may file a petition in the Himachal Pradesh High Court under Art. 226 of the Constitution for the grant of appropriate writ or direction. [1044B-F]

The State of Maharashtra v. The Central Provinces Manganese Ore Co. Ltd., [1977] 1 SCR 1002; Firm A.T.B. Mehtab Majid & Co. v. State of Madras, [1963] Suppl. 2 SCR 435; Koteshwar Vittal Kamath v. K. Rangappa Balica & Co., [1969] 3 SCR 40, and Halsbury's Laws of England, 3rd Edition, vol 36,p. 474, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3006 of 1987.

From the Judgment and Order dated 31.5.1984 of the Punjab and Haryana High Court in C.W.P. No. 5440 of 1982.

M.R. Sharma, R.S. Yadav and H.M. Singh for the Appellant.

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R.S. Sodhi, for the Respondents.

The Judgment of the Court was delivered by

SEN, J. This appeal by special leave directed against the judgment and order of the Punjab & Haryana High Court dated May 31, 1984, raises a question of some importance. By the judgment, a learned Single Judge (Tiwana, J.) party allowed the writ petition filed by the appellant and ordained the State Government of Punjab to pay a pension of Rs.400 per mensem to the appellant as a retired Member of the Punjab State Public Service Commission under Regulation 8(3) of the Punjab State Public Service Commission (Conditions of Service) Regulations, 1958 w.e.f. August 10, 1972, the date when the said provision was first introduced. While disallowing his claim for payment of such pension from January 2, 1959 i.e. from the date of his retirement, the learned Single Judge disallowed the appellant's claim for pension as a Member of the State Legislative Assembly under the proviso to sub-s. (1) of s. 6B of the Himachal Pradesh Legislative Assembly (Allowances & Pension of Members) Act, 1971 on the ground that no part of the cause of action against the State of Himachal Pradesh arose within the territorial jurisdiction of the High Court under Art. 226 of the Constitution.

The facts. The appellant herein Bhagat Ram Sharma, has had a very distinguished record of public service. In 1937, he was enrolled as an Advocate at Dharamshala and in that year he contested the general elections to the Punjab Legislative Assembly as an independent candidate from the Kangra West General Constituency. He was returned successfully and later joined the Indian National Congress. After the outbreak of the second world war, the Assembly had

a longer life than its normal tenure and it was not till 1946 that fresh elections were held. The appellant contested the election from the same constituency and was again returned as the successful candidate to the newly-elected Assembly. Before the expiry of the normal terms of that Assembly the partition of the country having taken place, the appellant by virtue of s. 5 of the Punjab (Provincial Legislatures) Order, 1947 issued under s. 9 of the India Independence Act, 1947, became a Member of the Joint Punjab Legislative Assembly. On July 17, 1948 the appellant was appointed to be Parliamentary Secretary. This Assembly was dissolved on June 19, 1951 and reconstituted on May 3, 1952. Prior to its dissolution, the appellant resigned from the post of Parliamentary Secretary on March, 29, 1951 and contested elections to the reconstituted Assembly and was elected as a Member.

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He continued to be a Member of the Joint Punjab Legislative Assembly till January 2, 1953 when, according to him, he resigned the Membership of the Assembly as directed by the Congress High Command to become a Member of the Punjab State Public Service Commission w.e.f. January 3, 1953. He continued to be such Member of the Public Service Commission for a period of six years i.e. till January 2, 1959,the date of his superannuation.

As from the appointed day under the States Reorganisation Act, 1956 i.e. November 1, 1956, the district of Kangra was transferred to the new State of Punjab. By virtue of cl.(a) of sub-s. (1) of s. 5 of the Punjab Reorganisation Act, 1966, on and from the appointed day i.e. November 1, 1966, the district of Kangra was added to the Union Territory of Himachal Pradesh. The State of Himachal Pradesh was established under the State of Himachal Pradesh Act, 1970 w.e.f. January 25, 1971, the appointed day. Sub-s. (2) of s. 10 of the Act provides that the territorial constituencies of the existing Union Territory of Himachal Pradesh shall be deemed to be the constituencies of the Legislative Assembly of the State of Himachal Pradesh. Sub-s. (3) thereof provides that every sitting Member of the Legislative Assembly of the existing Union Territory of Himachal Pradesh representing a territorial constituency which, on the appointed day, by virtue of the provisions of sub-s. (2), becomes a constituency of the State of Himachal Pradesh, shall be deemed to have been elected under Art. 170 to the Legislative Assembly of State of Himachal Pradesh from that constituency. As a result of these constitutional changes, the Kangra West General Constituency is a constituency of the Legislative Assembly of the State of Himachal Pradesh.

At the time when the appellant was elected to the Punjab Legislative Assembly from the Kangra West General Constituency in the year 1937, no monthly allowance or pension was payable to the Members of the Legislative Assembly. Similarly, when the appellant was appointed to be a Member of the Punjab State Public Service Commission, there was no provision for grant of pension to a Member of the Public Service Commission, who at the date of his appointment was not in the service of the Central or a State Government. However, with the passage of time, two important changes were brought about with respect to pensionary benefits. The Himachal Pradesh Legislative Assembly (Allowances & Pension of Members) Act, 1971 ('Himachal Pradesh Act' for short) was brought into force w.e.f. January 25, 1971. The expression 'Member'is defined in s. 2(c) to mean a member of the Assembly, other than a

Minister, Deputy Minister, Speaker or Deputy
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Speaker. Section 6B was inserted by the Himachal Pradesh Legislative Assembly (Allowances of Members) (Amendment) Act, 1976 and consequential changes were brought about. The Act was first intituled as the Himachal Pradesh Legislative Assembly (Allowances of Members) Act, 1971 and with the amendment of 1976, was changed to the Himachal Pradesh Legislative Assembly (Allowances & Pension of Members) Act, 1971 by introduction of the words 'allowances and pension'. Sub-s. (1) of s. 6B of the Act, insofar as relevant, provides:

> "6B. Pension. (1) There shall be paid a pension of Rs.300 per mensem to every person who has served for a period of not less than five years whether continuous or not as-
> (a) a member of Assembly; or
> *** *** *** ***
> (e)partly as a member of the Assembly and partly as a member of the Legislative Assembly .....of the erstwhile State of Punjab, as the case may be;"

The second proviso reads:

> "Provided further that where any person has served as aforesaid for a period exceeding five years, there shall be paid to him an additional pension of Rs. 50 per mensem for every year in excess of five, so, however, that in no case the pension payable to such person shall exceed Rs.500 per mensem."

Similarly, the Punjab Legislative Assembly enacted the Punjab State Legislature Members (Pension & Medical Facilities Regulation) Act, 1977 to provide for pension and medical facilities to persons who had been Members of the Punjab Legislative Assembly. The expression 'member' as defined in s. 2 of the Act unless the context otherwise requires, means a person who, after the commencement of the Constitution of India, has been a Member of (i) the Punjab Legislative Assembly; or (ii) the Punjab Legislative Council; or (iii) the Legislative Assembly of the erstwhile State of Patiala and East Punjab States Union; or (iv) partly as a Member of one and partly as a Member of the other. It would be seen that in the corresponding definition of 'member' in s. 2(c) of the Himachal Pradesh Act, the words 'after the commencement of the Constitution of India'are not there.But that
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should not make any difference in principle as to the liability of the State of Punjab under s. 3(1) of the Act, if at all applicable. Section 3(1) reads as follows:

> "3.(1) From the date of commencement of this Act, there shall be paid to every person who has served as a member for a period of five years, whether continuous or not, a pension of three hundred rupees per mensem:
> Provided that where any person has served as aforesaid for a period exceeding five years, there shall be paid to him an additional pension of fifty rupees per mensem for every year in excess of five, so, however, that in no case pension payable to such person shall exceed five hundred rupees per mensem."

After the conclusion of the hearing, we find that the amount of pension payable to a Member of the State Legislative Assembly has been increased both in the State of

Himachal Pradesh as well as in the State of Punjab. By the Himachal Pradesh Legislative Assembly (Allowances & Pension of Members) (Amendment) Act, 1986, the minimum pension as provided by s. 6B has been raised to Rs. 500 and the maximum pension as specified in the second proviso thereto from Rs. 500 to Rs. 1000. The Punjab Legislative Assembly has enacted the Punjab State Legislature Members (Pension and Medical Facilities Regulation) (Amendment) Act, 1986 and by a new sub-s. (1B) the pension of Rs. 300 as specified in s. 3(1), has been enhanced to Rs. 500 and the maximum pension of Rs. 500 as specified in the proviso, enhanced to Rs. 1000.

There was also a change in the Punjab State Public Service Commission (Conditions of Service) Regulations, 1958 which were brought on the statute book on March 10, 1958. But the Regulations by a deeming clause in Regulation 1(2) were brought into force w.e.f. November 1, 1956. To begin with, pensionary benefits were conferred by Regulation 8(1) upon a Member who at the date of his appointment was in the service of the Central or a State Government. Later on, it was realised that a person who was not in Government service on the date of his appointment as such Member should also be extended the pensionary benefits. To achieve this end, the Regulations were amended by an order dated August 10, 1972 issued by the Governor of Punjab in exercise of the powers under Art. 318 of the Constitution and all other powers enabling him in that behalf. Clauses (2) and (3) of
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the Punjab State Public Service Commission (Conditions of Service) (First Amendment) Regulations, 1972 were in these terms:

> "(2) In the Punjab State Public Service Commission (Conditions of Service) Regulations, 1958 (hereinafter referred to as the said regulations), for regulation 8, the following regulation shall be substituted, namely:-
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> 8(1) In the case of Member who at the date of his appointment was in the service of the Central or a State Government, service as Member shall count for pension under the rules applicable to the Service to which such Member belonged ....."
>
> "3(i). A Member, who at the date of his appointment as such was not in the service of the Central or a State Government shall, on his ceasing to hold office as such Member, be paid a pension of four hundred rupees per month;
>
> Provided that no such pension shall be payable to a Member:
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> (a) unless he has completed not less than three years of service for pension as such Member; or
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> *** *** *** ***''

It appears that the appellant made representations both to the Chief Minister of Punjab as well as to the Chief Minister of Himachal Pradesh in the matter of grant of pensionary benefits to him either as a Member of the State Legislative Assembly or as a Member of the Punjab State Public Service Commission, but in vain. The State Government of Punjab by letter dated August 30, 1982 regretted that the appellant could not be granted pension as a retired Member of the Punjab State Public Service Commission on the basis of Regulation 8(3) introduced by way of amendment on August 10, 1972 i.e. long after he had ceased to hold office as such Member. It was pointed out that the amendment made in

1972 was not given any retrospective effect. The State Government of Himachal Pradesh by letter of the Secretary to the Himachal Pradesh Vidhan Sabha dated October 26, 1982 intimated the decision of the State Government that he was not
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eligible to the grant of pension under s. 6B of the Himachal Pradesh Act. For the redressal of his grievances, the appellant approached the High Court under Art. 226 of the Constitution.

As already adumbrated, the learned Single Judge has partly allowed the writ petition directing the State Government of Punjab to pay a pension of Rs.400 per mensem to the appellant w.e.f. August 10, 1972 i.e. the date on which Regulation 8(3) was brought into force. He however repelled his claim for payment of such pension as such Member from January 2, 1959, the date of his retirement, on the ground that in the absence of any provision giving to it a retrospective effect, Regulation 8(3) merely because it had been 'substituted' could not be treated to relate back to the appointed day i.e. November 1, 1956. He also declined to grant any relief against the State of Himachal Pradesh based upon s. 6B of the Himachal Pradesh Act on the ground that no part of the cause of action arose within the territorial jurisdiction of the High Court under Art. 226 of the Constitution. Hence this appeal by special leave.

During the course of the arguments, learned counsel for the appellant was fair enough to accept that the appellant could not, in any event, claim more than one set of pension of Rs.500 per mensem either as a member of the State Legislative Assembly or as a retired Member of the Punjab State Public Service Commission. The High Court having partly allowed the writ petition and directed payment of Rs.400 per mensem to the appellant under Regulation 8(3) of the Regulations as a retired Member of the Public Service Commission w.e.f. August 10, 1972, the controversy is now limited to the payment of Rs.100 more and the period for which such pension could be claimed.

The submission on behalf of the appellant before us, as was in the High Court, is that the appellant was entitled to receive pension of Rs.500 per mensem as a Member of the State Legislative Assembly under s. 6B(1) of the Act read with the second proviso thereto from the State of Himachal Pradesh and that Regulation 8(3)(i) of the Punjab State Public Service Commission (Conditions of Service) Regulations, 1958 having been 'substituted' by an order of the Governor under Art. 318 of the Constitution, must be deemed to have come into effect from November 1, 1956, the appointed day, and therefore the appellant was upon that basis entitled to draw pension of Rs.400 per mensem from the State of Punjab as a Member of the Punjab State Public Service Commission w.e.f. January 2, 1959, the date of his superannuation. During the course of the arguments, it transpired that
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the Punjab Legislative Assembly had also enacted the Punjab State Legislature Members (Pension & Medical Facilities Regulation) Act, 1977 to provide for pension and medical facilities to persons who had been Members of the Punjab Legislative Assembly. That being so, the response of the learned counsel to this was that the appellant was in any view entitled to receive pension of Rs.500 per mensem as a Member of State Legislative Assembly either from the State of Himachal Pradesh or the State of Punjab. The matter is not so simple. The question still remains whether the

appellant can claim pension as a Member of the State Legislative Assembly against the State of Punjab under s. 3(1) of the Punjab Act.

We shall first deal with the question of payment of pension to the appellant as a Member of the State Legislative Assembly. As regards the liability of the State of Punjab to pay such pension to the appellant under s. 3(1) read with the proviso of the Punjab Act, we find that the appellant has laid no foundation for any such claim in the writ petition. There is no such point taken in the special leave petition as well. It is extremely doubtful whether the appellant can claim pension as a Member of this State Legislative Assembly from the State of Punjab in view of the constitutional changes brought about. The Kangra West General Constituency from which the appellant was elected to the Punjab Legislative Assembly and later to the Joint Punjab Legislative Assembly, is by reason of sub-s. (2) of s. 10 of the State of Himachal Pradesh Act, 1970 deemed to be a constituency of the Legislative Assembly of the State of Himachal Pradesh. The liability to pay pension to a Member of the State Legislative Assembly elected from a constituency which now forms part of the Legislative Assembly of Himachal Pradesh, cannot possibly be saddled on the State of Punjab. As regards the liability of the State of Himachal Pradesh to pay pension to the appellant under s. 6B(1) read with the second proviso of the Himachal Pradesh Act, the learned Single Judge has in our view rightly declined to grant any such relief inasmuch as no part of the cause of action arose within the territorial jurisdiction of the High Court under Art. 226 of the Constitution. It is needless to stress that the Himachal Pradesh Act is operative within the territories of that State. No exception can be taken to the view expressed by the learned Single Judge and we affirm the same. No interference with the judgment of the High Court dismissing the writ petition against the State of Himachal Pradesh is therefore called for.

It appears that the State Government of Himachal Pradesh repudiated the claim of the appellant to pension as a Member of the
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State Legislative Assembly under s. 6B(1) read with the second proviso on the ground that the period during which he was a Member of the Punjab Legislative Assembly and the Joint Punjab Legislative Assembly prior to the partition of the country i.e. prior to August 15, 1947 when the Dominion of India came into existence under the India Independence Act, 1947, could not be counted for purposes of his entitlement to pension under s. 6B of the Act, which appears to be prima facie erroneous. The appellant clearly answers the description of a Member as defined in s. 2(c) of the Act. Admittedly, the appellant had continuously been a Member of the State Legislative Assembly representing the Kangra West General Constituency from the year 1937 to January, 2, 1953, on which date he resigned his Membership from the Joint Punjab Legislative Assembly to assume the office of a Member of the Pubjab State Public Service Commission. Thus, the appellant had been a Member of the State Legislative Assembly for a period of nearly 16 years and his case appears to be covered by s.6B(1)(a) and (e) of the Act read with the second proviso. There is no provision in the Himachal Pradesh Act which disentitles a Member to the benefit of the period during which he was a Member of the State Legislative Assembly prior to the partition of the country. According to the view taken by this Court in D.S.

Nakara & Ors. v. Union of India, [1983] 2 SCR 165 the appellant would prima facie be entitled to the benefit of s. 6B(1) read with the second proviso of the Himachal Pradesh Act. Inasmuch as the State of Himachal Pradesh has chosen not to enter appearance in these proceedings, we refrain from expressing any final opinion on the question.

In view of the foregoing, the appellant is at liberty to move the State Government of Himachal Pradesh afresh for grant of pension under s. 6B(1) of the Act read with the second proviso, failing which he may file a petition in the Himachal Pradesh High Court under Art. 226 of the Constitution for grant of an appropriate writ or direction.

That takes us to the next and last contention of the appellant that Regulation 8(3) of the Regulations having been 'substituted' by cl. (3) of the Punjab State Public Service Commission (Conditions of Service) (First Amendment) Regulations, 1972 must be read along with Regulation 1(2) and therefore deemed to have come into force on November 1, 1956, the appointed day, and consequently, the appellant was entitled to pension as a retired Member of the Public Service Commission from January 2, 1959, the date of his superannuation, and not August 10, 1972, the date when the amendment came into effect. We are affraid, we are unable to accept this contention.

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In order to appreciate the point involved, we may reproduce the operative part of the order dated August 10, 1972 issued by the Governor of Punjab under Art. 318 of the Constitution bringing about a change in the law, which reads as follows:

> "In exercise of the powers conferred by Article 318 of the Constitution of India and all other powers enabling him in that behalf, the Governor of Punjab is pleased to make the following Regulations further to amend the Punjab State Public Service Commission (Conditions of Service) Regulations, 1958, namely:"

close look at the aforesaid order manifests an intention to enact a regulation to further amend the Regulations. It would be noticed that the new Regulation 8(1) has been 'substituted' for the old Regulation 8(1) and both deal with pensionary benefits to a Member who at the date of his appointment as such Member was in the service of the Central or a State Government. In contrast, Regulation 8(3) is a 'newly-added' provision conferring pensionary benefits on a person who at the date of his appointment was not in Government service. It may be recalled that while pensionary benefits under Regulation 8(1) were conferred upon a person who at the date of his appointment as a Member was in the service of the Central or a State Government, and his service as such Member was to count for pension under the rules applicable to the service to which he belonged, there was no corresponding provision for conferral of pensionary benefits on a person who at the date of his appointment as such Member was not in the service of the Central or a State Government. The newly-added provision contained in Regulation 8(3) is therefore a remedial measure to remove the anomaly then existing. Regulation 8(3) being a remedial measure, must receive a beneficial construction and if it is capable of two interpretations, the Courts must prefer that construction which permits the beneficent purpose behind it. When language of a statute is free from ambiguity, no duty is cast upon the Court to do anything more than to give effect to the word or words used. We do not mean to say that there might not be something in the

context of an Act of Parliament, or to be collected from its language, which might give to words prima facie prospective a larger operation, but that ought not to receive a larger operation unless you find some reason for giving it. Now, it would be seen that cl.(5) similarly 'substituted' new Regulation 6(1) dealing with the salary and allowances payable to the Chairman and other Members of the Public Service Commission, and underneath appears the following:
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> "Notwithstanding anything contained in the Regulations, clause (i) of the proviso to sub-regulation (I) shall be deemed to have come into effect from 1.11.1956."

Nothing prevented the Governor while issuing the aforesaid order dated August 10, 1972 from making a similar provision with regard to the newly-added Regulations 8(3). It is therefore manifest that the newly-added Regulation 8(3), in the absence of any provision giving it a retrospective operation, cannot prima facie bear a greater retroactive effect than intended.

It is a matter of legislative practice to provide while enacting an amending law, that an existing provision shall be deleted and a new provision substituted. Such deletion has the effect of repeal of the existing provision. Such a law may also provide for the introduction of a new provision. There is no real distinction between 'repeal' and an 'amendment'. In Sutherland's Statutory Construction, 3rd edn., vol. 1 at p. 477, the learned author makes the following statement of law:

> "The distinction between repeal and amendment as these terms are used by the Courts, is arbitrary. Naturally the use of these terms by the Court is based largely on how the Legislatures have developed and applied these terms in labelling their enactments. When a section is being added to an Act or a provision added to a section, the Legislatures commonly entitle the Act as an amendment .... When a provision is withdrawn from a section, the Legislatures call the Act an amendment, particularly when a provision is added to replace the one withdrawn. However, when an entire Act or section is abrogated and no new section is added to replace it, Legislatures lebel the Act accomplishing this result a repeal. Thus as used by the Legislatures, amendment and repeal may differ in kind-addition as opposed to withdrawal or only in degree-abrogation of part of a section as opposed to abrogation of a whole section or Act; or more commonly, in both kind and degree-addition of a provision to a section to replace a provision being abrogated as opposed by abrogation of a whole section of an Act. This arbitrary distinction has been followed by the Courts, and they have developed separate rules of construction for each. However, they have recognised that frequently an Act purporting to be an amendment has the same qualitative effect as a repeal-the abrogation of an

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> existing statutory provision-and have therefore applied the term 'implied repeal' and the rules of construction applicable to repeals to such amendments."

Amendment is, in fact, a wider term and it includes abrogation or deletion of a provision in an existing

statute. If the amendment of an existing law is small, the Act professes to amend; if it is extensive, it repeals a law and re-enacts it. An amendment of substantive law is not retrospective unless expressly laid down or by necessary implication inferred.

For the sake of completeness, we wish to add that the mere use of the word 'substitution' does not imply that Regulation 8(3) must relate back to November 1, 1956, the appointed day. The problem usually arises in case of repeal by substitution. In the case of executive instructions, the bare issue of a fresh instrument on the same subject would replace a previous instrument. But in the case of a legislative enactment, there would be no repeal of an existing law unless the substituting act or provision has been validly enacted with all the required formalities. In State of Maharashtra v. The Central Provinces Manganese Ore Co. Ltd., [1977] 1 SCR 1002 a three Judges Bench repelled the argument that since the word 'substituted' was used in the Amending Act of 1949. It necessarily followed that the process embraces two distinct steps, one of repeal and another of a fresh enactment. In that case, the whole legislative process termed 'substitution' proved to be abortive inasmuch the Amending Act did not receive the assent of the Governor General under s. 107 of the Government of India Act, 1935 and was thus void and inoperative. Distinguishing the two earlier decisions is Firm A.T.B. Mehtab Majid & Co. v. State of Madras, [1963] Suppl. 2 SCR 435 and Koteshwar Vittal Kamath v. K. Rangappa Balica & Co. [1969]3 SCR 40 the Court observed that the mere use of the word 'substituted' does not ipso facto or automatically repeal a provision until the provision which is to take its place is constitutionally permissible and legally effective. It relied upon the following principle of construction stated in Halsbury's Laws of England, 3rd edn., Vol. 36. p. 474:

> "Where an Act passed after 1850 repeals wholly or partially any former enactment and substitutes provision for the enactment repealed, the repealed enactment remains in force until the substituted provisions come into operation."

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And observed:

> "We do not think that the word substitution necessarily or always connotes two severable steps, that is to say, one of repeal and another of a fresh enactment even if it implies two steps. Indeed, the natural meaning of the word "substitution" is to indicate that the process cannot be split up into two pieces like this. If the process described as substitution fails, it is totally ineffective so as to leave intact what was sought to be displaced. That seems to us to be the ordinary and natural meaning of the words 'shall be substituted'."

The underlying fallacy of the argument is that lies in the assumption that Regulation 8(3) had been 'substituted'. What had been substituted is the new Regulation 8(1), and Regulation 8(3) is newlyadded by way of amendment to remove an existing anomaly.

We therefore find no justification to interfere with the judgment of the High Court. The appeal must accordingly fail and is dismissed. There shall be no order as to costs.

S.L. Appeal dismissed.

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