PETITIONER:
SALABUDDIN MOHAMED YUNUS

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT28/09/1984

BENCH:
MADON, D.P.
BENCH:
MADON, D.P.
CHANDRACHUD, Y.V. ((CJ)
MISRA RANGNATH

CITATION:
1984 AIR 1905 1985 SCR (1) 930
1984 SCC Supl. 399 1984 SCALE (2)573

ACT:
Constitution of India 1950, Articles 19 (1) (f), 19 (5), 31
Hyderabad Civil Service Regulations Rule 299 (1) (b) and State Government Notification dated February 3, 1971
Pension-Right to-A fundamental right-Whether could be curtailed or taken away by the State by an executive order.

HEADNOTE:
The appellant was employed in the service of the former Indian State of Hyderabad prior to the coming into force of the Constitution of India. On the coming into force of the Constitution of India, the said State became a part of the territory of India as a Part State and the Appellant continued in the service of that State, till he retired from service on January 21, 1956. The appellant claimed that he was entitled to be paid the salary of a High Court Judge from October 1, 1947 and also claimed that he was entitled to receive a pension of Rs. 1,000 a month in the Government of India currency being the maximum pension admissible under the rules. Both the aforesaid claims were negatived by the Government.

The Appellant thereupon filed a writ petition in the High Court against the Respondent-State of Andhra Pradesh, which was the principal successor State to the erstwhile State, which was contested under Regulation 6 of the Hyderabad Civil Service Regulations which were applicable in the case of the Appellant and that claim to pension was to be regulated by the rules in force at the time when the Government servant retired from the service of the Government. Under clause (b) of Regulation 313, the maximum pension ordinarily admissible for superior service to which the Appellant belonged was to be Osmania Sikka Rs. 1,000 a month. The Hyderabad Civil Service Regulations were replaced with effect from October 1, 1954 by the Hyderabad Civil Services Rules and under clause (b) of Rule 299 (which later became clause (b) of sub-rule (1) of Rule 299) the maximum pension ordinarily admissible for superior service was to be Rs. 1,000 a month,
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During the pendency of the writ petition, the

Government by a Notification dated February 3,1971 amended clause (b) of sub-rule (1) of Rule 299, with retrospective effect from October 1, 1954. The expression 'Rs. 1,000 a month in the said clause (b) was substituted by the expression 'Rs 857.15 a month". This amendment was made in exercise of the powers conferred by the proviso to Article 309 read with Article 313 of the Constitution of India.

The Single Judge who heard the Appellant's writ petition rejected the claim made by the Appellant with respect to salary on the ground that the said claim had been negatived by the Government as far back as 1955 and merely by making representations to the Government he could not keep the said claim alive. He however held that in view of the judgment of this Court in Deokinandan Prasad v. State of Bihar and Others [1971] Supp. S.C.R 634 the right to receive pension was property and was a fundamental right and that it had accrued to the Appellant on the date when he retired and could not be affected by a rule made subsequently under the proviso to Article 309, and allowed the writ petition to the extent that the Appellant was entitled to get his future pension at the rate of Rs. 1,000 a month in the Government of India currency from the date of filing of the said writ petition and arrears of pension at the same rate for a period of three years prior to the filing of the said writ petition.

The Respondent-State filed a Letters Patent Appeal, and the Division Bench held that this Court in Deokinandan Prasad's case did not hold that a pensioner was entitled to any pension that he demanded but all that was done in the said case was to direct the State to consider properly the claim of the pensioner for payment of pension according to law, and relying upon its earlier decisions in State of Andhra Pradesh v. Ahmed Hussain Khan and State of Andhra Pradesh v. S. Gopalan upholding the validity of the amendment made in clause (b) of Rule 299 (1) by the Notification dated February 3, 1971, allowed the appeal and dismissed the writ petition of the appellant.

Allowing the Appeal to this Court,

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HELD: The relevance placed by the Division Bench upon its earlier decision in the two writ appeals (Ahmed Hussain Khan and S. Gopalan) was misconceived. The two appeals arose out of separate writ petitions filed by two Government servants who had joined the service of the former Indian State of Hyderabad and retired after the States Reorganization Act, 1956 had come into force. This Court allowed the two Appeals and reversed the said judgment of the Division Bench, held that the letter dated April 28, 1973 from the Joint Secretary to the Government of India, Cabinet Secretariat did not amount to a previous approval granted by the Central Government to the amendment made by the Notification dated February 3, 1971 to clause (b) of Rule 299 (1) and that, the Notification was invalid and inoperative so far as it concerned persons referred to in sub-sections (1) and (2) of Section 115 of the States Reorganization Act, 1956. [936D-G]

In the instant case, the Appellant had retired prior to the appointed day, November 1, 1956. He therefore did not fall under either sub-section (1) or

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sub-section (2) of section 115 and the proviso to sub-section (7) of that section had no application to him. The amendment to the Rules, so far as he was concerned, did not, therefore, require any previous approval of the Central Government even though thereby the conditions of the service

were being varied to his disadvantage. [937F-G]

2. Pension being a fundamental right, it could only be taken away or curtailed in the manner provided in the Constitution, [938E]

In the instant case, the fundamental right to receive pension according to the rules in force accrued to the Appellant when he retired from service. By making a retrospective amendment to the said Rule 299 (1) (b) more than fifteen years after that right had accrued to him, what was done was to take away the Appellant's right to receive pension according to the rules in force at the date of his retirement or in any event to curtail and abridge that right. To that extent, the said amendment was void. [938H; 939A]

3. The Appellant was entitled to succeed in view of the judgment of this Court in Deokinandan Prasad's case. The Division Bench of the High Court has misunderstood the ratio of that decision. It was held in that case that pension is not a bounty payable at the sweet will and pleasure of the Government but is a right vesting in a Government servant and was property under clause (1) of Article 31 of the Constitution and the State had no power to with hold the same by a mere executive order. It was also held that this right was also property under sub-clause (f) of clause (1) of Article 19 of the Constitution and was not saved by clause (5) of that Article, and that this right of the Government servant to receive pension could not be curtailed or taken away, by the State by an executive order. [937H; 938A-D]

4. The fact that sub-clause (f) of clause (1) of Article 19 and Article 31 have been omitted from the Constitution by the Constitution (Forty-fourth Amendment Act,) 1978 with effect from June 20, 1979 was immaterial because on the date when the said Notification was issued, these provisions were part of the Constitution. [939B-C]

5, The Supreme Court reversed and set aside the Judgment of the Division Bench of the Andhra Pradesh High Court and restored the order passed by the Single Judge of that High Court. The Supreme Court directed the State of Andhra Pradesh to pay to the Appellant the amounts due to him according to the Judgment of the Single Judge of the High Court within one month and pay to him pension in future at the rate of Rs. 1000 per month in the Government of India currency. [939D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2629 of 1977.

Appeal by Special leave from the Judgment and Order dated the
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2nd February, 1976 of the Andhra Pradesh High Court in Writ Appeal No. 628 of 1974.

A. Subba Rao for the Appellant.

U.R. Lalit, and G. Narasimhulu for the Respondent.

The Judgment of the Court was delivered by

MADON, J. The Appellant joined the service of the Former Indian State of Hyderabad prior to the coming into force of the Constitution of India. On the coming into force of the Constitution of India on January 26, 1950, the former Indian State of Hyderabad became a part of the territory of India as a Part State and the Appellant continued in the service of that State. He retired from service on January

21, 1956, as Secretary to the Government of Hyderabad, Legal Department. The Appellant claimed that he was entitled to be paid the salary of a High Court Judge from October 1, 1947, being the date from which the recommendations of a Pay and Service Commission which had been set up had been implemented up to the date of his retirement from service. The Appellant also claimed that he was entitled to receive a pension of Rs. 1,000 a month in the Government of India currency being the maximum pension admissible under the rules in that behalf. Both the aforesaid claims were negatived by the Government in spite of several representations made by the Appellant. Ultimately, in order to enforce the aforesaid two claims, the Appellant filed in the High Court of Andhra Pradesh a writ petition under Article 226 of the Constitution of India, being Writ Petition No. 1613 of 1972, against the State of Andhra Pradesh which was the principal successor State to the erstwhile State of Hyderabad. A learned Single Judge of that High Court rejected the claim made by the Appellant with respect to salary on the ground that the said claim had been negatived by the Government as far back as 1955 and merely by making representations to the Government he could not keep that claim alive. So far as the amount of pension payable to the Appellant was concerned, the defence of the Respondent was that the amount of maximum pension payable under the rules in that behalf was not Rs. 1,000 a month in the Government of India currency but was O.S. Rs. 1,000 a month, that is, Osmania Sikka Rs. 1,000 Osmania Sikka being the currency of the former Indian State of Hyderabad) and, therefore, the Appellant was entitled to receive a pension of

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only Rs. 857.15 per month being the equivalent in the Government cf India currency of O.S. Rs. 1,000.

In order to understand this defence taken by the Respondent, it is necessary to mention that at the date when the Appellant joined service, his terms and conditions of service were governed by the Hyderabad Civil Service Regulations. Under Regulation 6 of the said Regulations, a Government servant's claim to pension was to be regulated by the rules in force at the time when the Government servant retired from the service of the Government. Under clause (b) of Regulation 313, the maximum pension ordinarily admissible for superior service to which the Appellant belonged was to be O.S. Rs. 1,000 a month. After the former Indian State of Hyderabad became a part of the territory of India, Hyderabad currency was demonetized with effect from April 1, 1953, and by section 2 of the Hyderabad Currency Demonetization (Consequential and Miscellaneous Provisions) Act, 1953 (Hyderabad Act No. 1 of 1953), references express or implied inter alia in any Regulation in force in the Hyderabad State immediately before the commencement of the said Act were to be construed as references to the equivalent amount in the Government of India currency according to the standard rate of exchange, namely, 7 O.S. rupees for 6 I.G. rupees, (Indian Government rupees). The Hyderabad Civil Service Regulations were replaced with effect from October 1, 1954, by the Hyderabad Civil Services Rules which were made by the Rajpramukh of the erstwhile State of Hyderabad in exercise of the power conferred by the proviso to Article 309 of the Constitution of India. Under Rule 4 of the said Rules also a Government servant's claim to pension was to be regulated by the Rules in force at the time when he retired from the service of the Government. Under clause (b) of Rule 299 (now clause (b) of sub-rule (1) of Rule 299) the maximum pension

ordinarily admissible for superior service was to be Rs. 1,000 a month. The contention of the Respondent was that the expression 'Rs. 1,000 a month' in the said clause (b) really meant O.S. Rs. 1,000 a month and that the qualifying letters O.S. were omitted by an inadvertent printing error. By a memorandum, being Memorandum No. 27439/540/Pen.I/69 dated April 28,1969, the Assistant Secretary to the Government of Andhra Pradesh, Finance Department, issued an erratum purporting to correct the sum of Rs. 1,000 mentioned in the said clause (b) of Rule 299 to O.S. Rs. 1,000. In Writ Petition No. 3318 of 1969-Dault Rai and
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Others v. State of Andhra Pradesh-a learned Single Judge of the said High Court held that there was no error in mentioning Rs. 1,000 and that what the said erratum purported to do in fact was to amend the said clause (b) of Rule 299 which could not be done without the approval of the Governor of Andhra Pradesh. The said judgment of the learned Single Judge was affirmed by a Division Bench of the said High Court in Writ Appeal No. 568 of 1970- State of Andhra Pradesh v. Daulat Rai and Others. The said Division Bench also rejected an application made by the State for a certificate to appeal to this Court and a petition for special leave to appeal against the said judgment was dismissed by this Court. In view of this position, the Respondent's contention that the Appellant was entitled only to a pension of Rs. 857.15 per month was bound to fail. Hoverer, during the pendency of the Appellant's writ petition, by a Government Notification dated February 3, 1971, the said clause (b) of sub-rule (1) of Rule 299, as it had then become, was amended with retrospective effect from October 1, 1954. By this amendment the expression Rs. 1000 a month' in the said clause (b) was substituted by the expression 'Rs. 857.15 a month'. This amendment was made in exercise of the powers conferred by the proviso to Article 309 read with Article 313 of the Constitution of India. The learned Single Judge who heard the Appellant's writ petition held that in view of the Judgment of this Court in Deokinandan Prasad v. State of Bihar and Others the right to receive pension was property and was a fundamental right guaranteed both by Article 19(1)(f) and Article 31 (1) of the Constitution of India and that it had accrued to the Appellant on the date when he retired and could not be affected by a rule made subsequently under the proviso to Article 309. The learned Single Judge, there. fore, allowed the said writ petition to the extent that the Appellant was entitled to get his future pension at the rate of Rs. 1,000 a month in the Government of India currency from the date of the filing of the said writ petition and arrears of pension at the same rate for a period of three years before the filing of the said writ petition, namely April 13, 1972. The learned Single Judge made no order as to the costs of the said writ petition.

The Respondent filed a Letters Patent Appeal against the judgment of the learned Single Judge, being Writ Appeal No. 628
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of 1974. The Appellant did not file any cross appeal. The Division Bench Which heard the said appeal held that in Deokinandan Prasad's case this Court did not hold that a pensioner was entitled to any pension that he demanded but all that was done in the case was to direct the State to consider properly the claim of the pensioner for payment of pension according to law. It further relied upon its decision given in Writ Appeal No. 835 of 1974- State of

Andhra Pradesh v. Ahmed Hussain Khan-heard along with Writ Appeal No. 920 of 1974-State of Andhra Pradesh v. S. Gopalan-In which the same Bench had held that the amendment made in the said clause (b) of Rule 299 (1) by the said Notification dated February 3, 1971, was valid. The Division Bench accordingly allowed the said appeal and dismissed the Appellant's said writ petition with no order as to the costs. lt is against this judgment and order of the Division Bench of the Andhra Pradesh High Court that the present Appeal has been filed by the Appellant by Special Leave granted by this Court.

We find that the reliance placed by the Division Bench upon its earlier decision in the two writ appeals referred to above was misconceived. Those two appeals arose out of separate writ petitions filed by two Government servants who had joined the service of the former Indian State of Hyderabad and had retired after the States Reorganization Act, 1956 (Act XXXVII of 1956), had come into force. The contentions of those two Government servants was that the conditions of service applicable immediately before the appointed day, namely, November, 1, 1956, to per sons referred to in sub-section (1) or sub-section (2) of section 115 of the said Act could not be varied to their disadvantage except with the previous approval of the Central Government by reason of the proviso to sub-section (7) of the said section 115, and that as the approval of the Central Government had not been obtained to the said Notification, the said amendment was invalid. This contention was upheld by a learned Single Judge of the High Court. The Division Bench had, however, held in the above two appeals that a letter dated April 28, 1973, from the Joint Secretary to the Government of India, Cabinet Secretariat, Department of Personnel and A.R., amounted to the previous approval of the Central Government within the meaning of the proviso to sub-section (7) of the said section 115. The said two Government servants thereupon filed appeals in this Court by special leave granted
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by it, being Civil Appeal No. 2627 of 1977-Ahmed Hussain than v. State of Andhra Pradesh and Civil Appeal No. 2628 of 1977-S. Gopalan v. State of Andhra Pradesh. This Court allowed those two Appeals and reversed the judgment of the Division Bench holding that the said letter dated April 28, 1973, did not amount to a previous approval granted by the Central Government to the amendment made by the said Notification dated February 3, 1971, to the said clause (b) of Rule 299(1) and that therefore, the said Notification was invalid and inoperative so far as it concerned persons referred to in sub-sections (1) and (2) of the section 115. Sub-section (1) of section 115 refers to every person who immediately before the appointed day, namely, November 1, 1956, was serving in connection with the affairs of the Union under the administrative control of the Lieutenant-Governor or Chief Commissioner in any of the then existing States of Ajmer Bhopal, Coorg, Kutch and Vindhya Pradesh, or was serving in connection with the affairs of any of the then existing States of Mysore, Punjab, Patiala and East Punjab States Union and Saurashtra, and was on the appointed day deemed to have been allotted to serve in connection with the affairs of the successor State to that existing State. Sub-section (2) refers to every person who immediately before the appointed day, namely, November, 1 1956, was serving in connection with the affairs of an existing State part of whose territories was transferred to another State by the provisions of Part II of the said Act and who, as

from that day provisionally continued to serve in connection with the affairs of the principal successor State to that existing State. The Appellant in the present Appeal had retired prior to November 1, 1956. He, therefore, did not fall under either sub-section (1) or sub-section (2) of the said section 115 and proviso to sub-section (7) of that section had no application to him. The amendment to the Rules, so far as he was concerned, did not, therefore, require any previous approval of the Central Government even though thereby the conditions of his service were being varied to his disadvantage.

That, however, is not the end of the matter, because in spite of this position, the Appellant is entitled to succeed in view of the Judgment of this Court in Deokinandan Prasad's case which is a decision of a five judge Bench of this Court. We find that the Division Bench has misunderstood the ratio of that decision.

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In that case, this Court held that the payment of pension does not depend upon the discretion of the State but is governed by rules made in that behalf and a Government servant coming within such rules is entitled to claim pension. It was further held that the grant of pension does not depend upon an officer being passed by the authorities to that effect though for the purpose of quantifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the rules. It was also held in that case that pension is not a bounty payable at the sweet will and pleasure of the Government but is a right vesting in a Government servant and was property under clause (1) of Article 31 of the Constitution of India and the State had no power to withhold the same by a mere executive order and that similarly this right was also property under sub-clause (f) of clause (1) of Article 19 of the Constitution of India and was not saved by clause (5) of that Article. It was further held that this right of the Government servant to receive pension could not be curtailed or taken away by the State by an executive order.

Pension being thus a fundamental right, it could only be taken away or curtailed in the manner provided in the Constitution. So far as Article 31 (1) is concerned, it may be said that the Appellant was deprived of, his property, by authority of law but this could not be said to have been done for a public purpose nor was any compensation being given to the Appellant for deprivation of his property, namely a sum of Rs. 142.85 being the difference between Rs. 1,000 and Rs. 857.15. So far as Article 19 (1) (f) is concerned, the fundamental right under that sub-clause could be restricted only as provided by clause (S) of Article 19. That clause has no application to a right to receive pension which is property under sub-clause (f) of Article 19 (1) of the Constitution as held in Deokinandan Prasad's case. The said amendment could not by any stretch of imagination be classified as a law of the nature mentioned in clause (5) of Article 19. In Deokinandan Prasad's case it was expressly held that clause (S) of Article 19 has no application to the right to receive pension. The fundamental right to receive pension according to the rules in force on the date of his retirement accrued to the Appellant when he retired from service. By making a retrospective amendment to the said Rule 299 (1) (b) more than

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fifteen years after that right had accrued to him, what was done was to take away the Appellant's right to receive pension according A to the rules in force at the date of his retirement or in any event to curtail and abridge that right. To that extent, the said amendment was void. The fact that sub-clause (f) of clause (1) of Article 19 and Article 31 have been omitted from the Constitution by the Constitution (Forty-forth Amendment) Act, 1978, with effect from June 20, 1979, is immaterial because both on the date when the Appellant retired as also on the date when the said Notification was issued, these provisions were part of the Constitution.

In the result, we allow this Appeal, reverse the judgment and set aside the order of the Division Bench of the Andhra Pradesh High Court appealed against and restore the order passed by the learned Single Judge. We direct the State of Andhra Pradesh to pay to the Appellant the amounts due to him according to the judgment of the learned Single Judge of that High Court within one month from today and to pay to him pension in future at the rate of Rs. 1,000 per month in the Government of India currency.

The Respondent will pay to the Appellant the costs of this Appeal.

N.V.K. Appeal allowed.

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