

## UNION OF INDIA

v.

P. M. JAYARAJAN

December 3, 1975

[A. N. RAY, C.J., M. H. BEG, R. S. SARKARIA AND P. N. SHINGHAL, JJ.]

*Constitution of India (28th amendment) Act 1972—Art. 312-A—Former Secretary of State Service Officers (Conditions of Service) Act 1972—Ss. (8) and 12 read with second proviso to Art. 934 of the Civil Service Regulations—Rate of conversion of pension payable is 1 sh. 6d. to a rupee.*

The claim of his pension at the rate of 1sh-9d. to a rupee by the respondent, a former Secretary of State Service Officer was allowed by the Accountant General, but the Union appellant reversed it and directed recovery of the excess payment. The respondent basing his claim under the second proviso to Art. 934 of the Civil Service Regulations moved the High Court under Art. 226 of the Constitution which was accepted. The Letters Patent Appeal filed by the Union was dismissed. The appeal by special leave, in view of the Constitution (28th amendment) Act 1972 introducing Art. 312A and the Former Secretary of State Service Officers (Conditions of Service) Act 1972, was accepted and the court.

**HELD :** (i) Under S. 12 of the Former Secretary of State Service Officers (Conditions of services) Act 1972, enacted by Parliament by virtue of Art. 312A of the Constitution, the provisions of the Act or of any order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any law other than the Act or in any rule, regulation or order or other instrument, having effect by virtue of any law other than the 1972 Act. [863-B]

(ii) The former members of the Indian Civil Service as a result of Ss. 8 & 12 of the Conditions of Service Act, 1972 are not entitled to claim payment of pension in sterling or outside India, or by converting £,1000/- at the rate of exchange exceeding the rate of exchange of rupees thirteen one third to the pound sterling. [863-C]

(iii) The Judgment of the High Court holding that the second proviso to Art. 934 of the Civil Service Regulations applied to the instant case, cannot be sustained by reason of change in law. [863-D]

*V. B. Raju v. State of Gujarat & Ors.* [1975] 1 S.C.R. 797, followed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 219 of 1974.

Appeal by Special Leave from the Judgment and Order dated the 3-3-1972 of the Madras High Court in Writ Appeal No. 416 of 1970.

*R. M. Mehta and S. P. Nayar* for the Appellant.

*A. V. Rangam and Miss A. Subhashini* for Respondent.

The Judgment of the Court was delivered by

RAY, C.J. This appeal is by special leave from the judgment dated 3 March 1972 of the High Court of Madras.

The respondent in an application under Article 226 of the Constitution asked for a writ of mandamus directing the appellant Union to pay the respondent pension at the rate of 1s-9d per rupee in accordance with Regulations 934-A and 934-D of the Civil Service Regulations.

**A** The respondent is a Ceylonese national. He joined the Indian Civil Service on 6th October 1933. After 15 August 1947 he continued to serve in our country until his retirement on 31 December 1949.

At his retirement he was sanctioned an annuity of £743-2 shillings-6 pence per annum. He commuted a part of his pension leaving a balance of Rs. 500 per month.

**B** Between March, 1968 and October 1969 he resided in Uganda in East Africa. When the respondent was in Uganda he claimed pension at the rate of 1s-9d to a rupee. His request was accepted by the Accountant General, Madras. The Union Government reversed the decision and directed that the conversion rate should be 1s-6d to a rupee and the excess payment should be recovered from the respondent. The respondent thereafter made an application under Article 226 of the Constitution.

**C** The High Court accepted the petition of the respondent on the ground that the respondent shifted his residence from Ceylon to Uganda and was, therefore, entitled to benefit under the second proviso to Article 934 of the Civil Service Regulations. The second proviso to Article 934 was as follows :—

**D** “Provided that save where a pensioner resides in India (which for the purpose of this Article and Articles 934-A, 934-B, 934-C, 934-D and 935 shall be deemed to include Burma, Ceylon, Nepal, and the French and Portuguese establishments in India) the minimum rate of conversion shall be 1/9 per rupee”.

**E** The question of payment of pension to Members of the Indian Civil Service in Sterling was examined by this Court in *V. B. Raju & Ors. v. State of Gujarat & Ors.*<sup>(1)</sup> The Constitution (Twentyeighth Amendment) Act, 1972 introduced Article 312-A. Article 312-A confers power on Parliament to make law, *inter alia*, to vary or revoke prospectively or retrospectively the conditions of service as respects pension of persons who having been appointed by Secretary of State or Secretary of State in Council to a Civil Service of the Crown in India before the commencement of the Constitution retired or otherwise ceased to be in service at any time before the commencement of the Constitution (28th Amendment) Act, 1972. The Constitution (28th Amendment) Act, 1972 came into existence on 27 August 1972.

**F** Parliament on 21 September 1972 made the law called the Former Secretary of State Service Officers (Conditions of Service) Act, 1972. A former Secretary of State Officer means a person referred to in sub-clause (a) or sub-clause (b) of clause (1) of Article 312-A of the Constitution. The respondent is a former Secretary of State Service Officer within the meaning of sub-clause (a) of clause (1) of Article 312-A. Section 8(1) of the Conditions of Service Act, 1972 enacts that no former Secretary of State Service Officer shall be entitled or be deemed to have been entitled, to claim (a) pension in sterling; or (b)

(1) [1975] 1 S.C.R. 797.

that his pension shall be paid outside India; or (c) where his pension was expressed in sterling or a fixed sterling minimum was applicable in respect of the pension payable to him, that his pension shall be commuted in the rupee equivalent of the amount fixed in sterling at a rate of exchange exceeding the rate of rupees thirteen and one-third to the pound sterling.

A

Section 12 of the Former Secretary of State Service Officers (Conditions of Service) Act, 1972 states that the provisions of this Act or of any order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any law other than this Act or in any rule, regulation or order or other instrument having effect by virtue of any law other than the 1972 Act.

B

The Constitution Bench of this Court in *V. B. Raju's* case (supra) held that the former Members of the Indian Civil Service as a result of the Conditions of Service Act, 1972 are not entitled to claim payment of pension in sterling or outside India or by converting £ 1000 at the rate of exchange exceeding the rate of exchange of Rupees thirteen and one third to the pound sterling.

C

The judgment of the High Court cannot be sustained by reason of change in law. The appeal is accepted and the judgment of the High Court is set aside. Parties will pay and bear their own costs.

D

S.R.

*Appeal allowed.*