(21) Accordingly, we find no merit in these petitions, which are dismissed. However, in the circumstances of these case, the parties are left to bear their own costs.

J.S.T.

Before Hon'ble Jawahar Lal Gupta & R. S. Mongia, JJ.

KRISHAN LAL AGGARWAL,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

C.W.P. 8186 *of* 1994

8th September, 1994

Constitution of India, 1950—*Arts.* 226/227—*States Reorganisation Act,* 1956—*Retirement age—Whether action of state in relieving petitioners at age of* 58 *violative of provisions of the Act—Held not violative.*

Held, that after consideration of the matter, we are of the considered view that even if an employee initially joins a post in a Class-IV service, he cannot continue till the age of 60 years if at the time of retirement, he is holding a Class III post for which the age of retirement is admittedly 58 years. Consequently, we answer the first question posed at the outset in the negative.

Constitution of India, 1950—*Art.* 226/227/309—*Whether petitioners who initially joined service as class IV employee in erstwhile state of Pepsu are to retire at age of* 60 *years despite being promoted to higher service—Held, that the post at time of retirement is relevant for determining the age of supernation.*

Held, that the second question relating to the violation of the provisions of the States Reorganisation Act, 1957 and the Punjab Reorganisation Act, 1966, does not really arise. However, even otherwise we do not find any merit in the contention raised on behalf of the petitioners. In this behalf it deserves mention that under article 309 of the Constitution, the state Government is competent to amend the rules relating to the conditions of service.

R. K. Battas, Advocate, *for the Petitioner.*

R. K. Joshi, Addl.A.G. Punjab, *for the Respondents.*

JUDGMENT

Jawahar Lal Gupta, J.

Do the petitioners, who had initially joined Class-IV posts in the former Princely States or in the erst while State of Pepsu, have a right to continue in service till the age of 60 years in spite of the fact that they had been promoted to a higher service ? Is the action of the State Government in retiring the petitioners at the age of 58 years violative of the provisions of the States Reorganisation Act, 1956 and the Rules ? These are the two primary questions that have been raised in this bunch of 11 writ petitions viz. Civil Writ Petitions Nos. 1845, 7552, 8182, 8183, 8186, 9499, 9716, 10038, 10076, 10391 and 10626 of 1994. The facts as averred in Civil Writ Petition No. 8186 of 1994, may be briefly noticed.

Initially, there existed the princely States of Faridkot, Jind, Kapurthala, Nabha, Patiala, Kalsia and Nalagarh. In the year 1948, these Princely States were merged to form the Patiala and East Punjab States Union (for short the 'PEPSU'). The petitioners in these cases were initially appointed to different posts in the former Princely States or in the erstwhile State of PEPSU. The petitioner in Civil Writ Petition No. 8186 of 1994 was appointed as an Octroi Clerk on May 12, 1956 in the pay scale of Rs. 40-2-60 by the Administrator, Municipal Committee, Patiala. He avers that the post held by him was classified as a part of the inferior service. The members of the inferior services were entitled to continue in service till the age of 60 years.

The conditions of service of the employees in the erstwhile State of PEPSU were governed by the PEPSU Service Regulations. On July 26, 1954 His Highness the Raj Parmukh was pleased to order that a note shall be added under Article 9.1 of the Pepsu Service Regulations to the effect that "the age for retirement of Class-IV, Government servants will be 60 years." This order was passed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. It appears that the Rules governing the grant of pension called "The New Pension Rules. 1953" had also been enforced in PEPSU. On January 21, 1956, an office memorandum was issued under the orders of His Highness the Raj Parmukh to the following effect :—

> "The words "Class IV Servants" occurring in the last sentence of para 7 of the New Pension Rules may be substituted by the words "State's Employees whose pay (including all

elements of the Nature of Pay) did not or does not exceed Rs. 200 per mensem."

The petitioner was born on September 6, 1936. Being a member of the inferior service, as he had been appointed on a post carrying a salary less than of Rs. 200 per mensem, he claims that he is entitled to continue in service till the year 1996 when he would attain the age of 60 years. It has been further averred that the erstwhile State of Pepsu having been merged with the State of Punjab, the conditions of service as existing prior to merger cannot be varied to the disadvantage of the employees without the prior approval of the Central Government as envisaged in the proviso to Section 115(7) of the States Re-organisation Act, 1957. Reference has also been made to the provisions of the Punjab Re-organisation Act, 1966 to contend that the conditions of service were duly protected under Section 2(6) even at the time of Re-organisation of the Punjab State.

The Motion Bench had directed the issue of notice to show cause to the respondents. Keeping in view the fact that the issue was being raised in a number of petitions, we have heard the learned counsel for the parties at length at the stage of preliminary hearing.

Mr. R. K. Battas had initially argued the case on behalf of the petitioners. The arguments were subsequently supplemented by other counsel as well. He contended that a person appointed to a post which carried a salary of less than Rs. 200 per mensem has a right to continue in service till he attains the age of 60 years and that the action of the respondents in proceeding to retire the petitioners at the age of 58 years is violative of the provisions of the States Re-organisation Act, 1956. Is it so ?

Admittedly, the petitioner is at present working as Chief Sanitary Inspector. Undeniably, this post is not a Class IV post. Similarly, the petitioners in the connected cases are not working on Class IV posts and are admittedly holding posts which belong to the Class III Services. Furthermore, it is also the admitted position that their salary is well above the limit of Rs. 200 which had been mentioned in the order dated January 21, 1956. In this situation, even if it is assumed that the Pepsu Service Regulations are still on the Statute book or that the conditions of service governing the petitioners are duly protected, the petitioners are not entitled to continue till the age of 60 years. They are not Class-IV government servants. Their pay is much more than Rs. 200 per mensem. They have in fact held/

are holding Class III posts. It is the Rule governing the Class III services that would be applicable. The Rule governing the Class-IV or 'inferior services' cannot be invoked. As such, the Pepsu Service Regulations or the orders of His Highness the Raj Pramukh do not entitle the petitioners to continue upto the age of 60 years.

Faced with this situation, Mr. Battas contended that under the office memorandum dated January 21, 1956, all employees whose pay "did not or does not exceed Rs. 200 per mensem" are to be classified as Class-IV servants. In other words, it was suggested that a person whose emoluments at the time of entry into service did not exceed Rs. 200 shall continue to be classified as a Class-IV servant till his retirement. We are unable to accept this argument . A person may initially join service as a Peon. While working as such, he may compete for a higher post and get selected therefor. On his selection, he may join a Class III or a Class II post. Surely, he cannot be treated as a Class-IV employee at the time of his retirement merely because when he joined service, his pay did not exceed Rs. 200 per mensem. The office order only covered the cases of such persons as were in fact members of Class-IV service and were actually drawing pay which did not exceed Rs. 200 per mensem. This order governed the grant of pension. There is nothing to indicate that it provided for retirement at the age of 60 years. In any case, it cannot be interpreted to mean that a person who entered the portals of Government Service as a Class IV employee but was later on promoted or appointed to a higher service shall have a longer tenure than a person who was directly appointed to a Class III Service.

Learned counsel for the petitioner in Civil Writ Petition No. 10391 of 1994 has drawn our attention to the judgment of a Division Bench of this Court in *Union of India* v. *Gobinder Singh* (1). In this case, Gobinder Singh was appointed as Excise Moharrir on August 20, 1937 in the erstwhile State of Patiala on a permanent basis. He was finally integrated in the Central Government Service under the Scheme of Federal Financial Integration of Part 'B' States. At that time, the Central Government in the Ministry of Finance had issued an executive order regarding the age of retirement of such employees. The Division Bench following the judgment of the Delhi High Court in *Jagan Nath* v. *Union of India* (2), held that Gobinder Singh was governed by the provisions of Rule 56(c). The facts and the issue involved in the present case are totally different. This judgment in our opinion, is of no relevance to the present case.

(1) 1991 (1) RSJ 633.

(2) 1969 SLR 551.

Accordingly, we hold that the claim of the petitioners in all these writ petitions that they should be treated as members of Class IV service or that they have a right to continue till the age of 60 years cannot be sustained. It is the post held by them at the time of retirement which is relevant for determining the age of superannuation. Since, none of the petitioners is holding a Class IV post and all of them are in fact members of Class III Services, they have no right to continue till the age of 60 years.

Another fact which may be mentioned here is that the Pepsu Service Regulations were amended,—*vide* Notification dated February 7, 1964. These rules were called 'The Pepsu Service Regulations, Volume I (First Amendment) Regulations, 1964. They were deemed to have come into force with effect from March 28, 1963. In Article 9.1, "in clause (i), for the figure '55' the figure '58' was substituted and the following proviso was inserted :—

> "Provided further that the appointing authority retains an absolute right to retire any Government Servant except a Class IV Government Servant, by giving him three months' notice, on or after he has attained the age of 55 years, without assigning any reasons. A corresponding right is also available to such a Government Servant by giving three months' notice of his intention to retire, on or after he has attained the age of 55 years."

It is, thus, clear that even in the erstwhile State of Pepsu, a Class-III employee was liable to retire at the age of 55 years. It was raised to 58 years with effect from March 28, 1963. The action of the respondents in retiring the petitioners who are admittedly members of the Class III Services, at the age of 58 years, is, thus, in strict conformity with the provision of the Pepsu Service Regulations.

Mr. S. K. Sharma, learned counsel for the petitioners in Civil Writ Petitions Nos. 1845 and 10076 of 1994, contended that in the case of Municipal employees, the conditions of service are governed by the contract and the Rules. Since no rule had been promulgated relating to the age of superannuation and it was not shown that the employee could be retired at the age of 58 years, the petitioners had a right to continue in service till they were medically fit.

There is no quarrel with the proposition putforth by the learned

counsel. However, no contract of service or any other document has been produced to show that the age of superannuation had not been specifically prescribed. Furthermore, a perusal of the record of Civil Writ Petition No. 1845 of 1994 (*Bhoop Singh Yadav* v. *Municipal Committee, Malerkotla*) shows that the petitioner had sent a representation (a copy of which has been produced as Annexure P-4) in which it has been averred that he may be retired on the completion of the age of 60 years as he had been recruited as a Peon. Admittedly, the petitioner who had been initially recruited as a Peon had been promoted as an Octroi Clerk on August 1, 1959. Consequently, the claim based on the fact that he had been initially recruited as a Peon, cannot be sustained. As already observed, it is the post held by the petitioner at the time of his retirement that determines the age of superannuation. As for the claim in Civil Writ Petition No. 10076 of 1994 (*Lal Singh* v. *State of Punjab etc.*), it may be mentioned that the petitioner had initially joined service as an Agriculture Patwari which was classified as a Class-IV post in the erstwhile State of Pepsu. He had been promoted as a Sub-Inspector and thereafter, as a Mela Officer (Fair Officer). Neither the post of Agriculture Sub-Inspector nor that of the Mela Officer was claissified as a Class-IV post. Accordingly, even the claim of Lal Singh cannot be sustained.

Learned counsel submitted that another employee viz. Hardev Singh had been allowed to continue till the age of 60 years. Reliance in this behalf was placed on the order dated February 17, 1989, a copy of which has been produced as Annexure P-2 with the writ petition. A perusal of this order shows that Hardev Singh was working as a Jeep Driver. It has not been shown that this post had been classified as a Class III post. Admittedly, even in the State of Punjab, the Drivers are allowed to continue till the age of 60 years. The mere fact that a Jeep Driver was allowed to continue till the age of 60 years, the petitioner who is admittedly holding a different and higher post cannot claim that he has a right to continue till he attains the age of 60 years. Reference was also made by the learned counsel to the case of Ramji Dass, a Horticulture Sub-Inspector, to contend that he was similarly placed and should, thus, be allowed to continue till the age of 60 years.

A perusal of the record shows that the said Ramji Dass had filed a civil suit which was decreed by the civil court. The appeal filed by the State of Punjab was dismissed by the Additional

District Judge, Patiala,—*vide* order dated February 4, 1987. It was in pursuance to the orders of the civil court that the State Government had permitted the official to continue in service upto the age of 60 years. This cannot, however, constitute a precedent on the basis of which the petitioner may be entitled to raise the plea of discrimination or violation of Article 14 of the Constitution. Learned counsel had referred to certain decisions in support of his submission. We are not making a detailed reference to these cases in view of the fact that they are based on the peculiar provisions and facts. These are not relevant for the decision of the cases in hand.

After a consideration of the matter, we are of the considered view that even if an employee initially joins a post in a Class-IV service, he cannot continue till the age of 60 years if at the time of retirement, he is holding a Class-III post for which the age of retirement is admittedly 58 years. Consequently, we answer the first question posed at the outset in the negative.

In view of our above conclusion, the second question relating to the violation of the provisions of the States Re-organisation Act, 1957 and the Punjab Re-organisation Act, 1966, does not really arise. However, even otherwise, we do not fine any merit in the contention raised on behalf of the petitioners. In this behalf it deserves mention that under Article 309 of the Constitution, the State Government is competent to amend the rules relating to the conditions of service. It has been held by their Lordships of the Supreme Court in *D. S. Vadhera* v. *Union of India* (3), that the rules framed under Article 309 of the Constitution are legislative in character. These can be enforced prospectively as well as retrospectively. This principle of law was reiterated in *K. Nagraj* v. *State of A.P.* (4). The conditions of service relating to the petitioners in the erstwhile State of Pepsu were contained in the Pepsu Service Regulations. As noticed above, these rules were modified,—*vide* notification dated February 7, 1964 with effect from March 28, 1963. Under the Pepsu Service Regulations, the employees holding Class III posts were liable to be retired at the age of 55 years. By the above-mentioned notification, the age of superannuation was raised to 58 years. That being so, even in the erstwhile State of Pepsu, the Class III employees were liable to be retired at the age of

(3) 1969 SLR 7.
(4) AIR 1985 SC 551.

58 years. Consequently, no change in the conditions of service relating to the petitioners has occured. Even otherwise, it has been held by their Lordships of the Supreme Court in *N. Raghavendra Rao* v. *Dy. Comm. South Kanora Managalore* (5), that a general approval granted by the Government of India is sufficient compliance with the provisions of Section 115(7) of the States Reorganisation Act. This view was reiterated by their Lordships of the Supreme Court in Mohd. Shujat Ali's case 1974(2) SLR 508.

Learned counsel for the petitioners has also referred to the decision of a learned Single Judge of this Court in *Ram Sarup Jindal* v. *The Chief Secretary and another* (6). Ram Sarup had joined service in the erstwhile Princely State of Jind as Kanungo on June 12, 1940. On the formation of Pepsu, he was integrated as Naib Tehsildar. On October 20, 1954, he was promoted as Tehsildar. After the merger of the erstwhile State of Pepsu, he was selected and appointed to the PCS (Executive) Branch on June 18, 1962. He retired on attaining the age of 58 years. He filed a civil suit claiming that he was entitled to continue in service till he attained the age of 62 years. This claim was based on the ground that according to the conditions of service prevailing in the State of Jind, an employee had a right to continue till the age of 62 years. The suit was decreed by the learned trial Court but the decision was reversed by the appellate court. In second appeal, the learned Judge accepted the claim of Ram Sarup Jindal and decreed his suit. We have examined this judgment carefully. We do not find reference to any provision of rules indicating that the age of retirement in the erstwhile Princely State of Jind was 62 years. The learned Judge has made reference to the provisions of Article XVI of the Government, according to which certain protection was given to the employees of the erstwhile Princely States. Reference has also been made to the provisions of the States Re-organisation Act, 1956 and the Punjab Re-organisation Act, 1966. However, we are unable to find any basis for the view that the appellant continued to be governed by the conditions of the Princely State of Jind which governed his services when he was recruited as a civilian clerk on 12th July, 1943. We are unable to agree with the learned Judge.

In view of the above, even the second question is answered in the negative.

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(5) A.I.R. 1964 S.L.R. 549.
(6) 1994 (3) R.S.J. 224.

Accordingly, we find no merit in these petitions. These are dismissed in limine. However, in the circumstances of these cases, we make no order as to costs.

J.S.T.

Before Hon'ble R. P. Sethi & Sat Pal, JJ.

THE COMMISSIONER OF INCOME TAX, AMRITSAR,—*Petitioner.*

versus

M/S LAKSHMI PRINTING CO., AMRITSAR,—*Respondent.*

Income Tax Case No. 162 *of* 1994.

30th September, 1994.

Income Tax Case—Income Tax Act, 1961—*S.* 256(2)—*Making of reference—Powers exercised under section are advisory in nature—High Court can require making of reference upon question of law not yet settled.*

Held, that it is acknowledged position of law that the powers exercised under sub-section 2 of Section 256 of the Act are advisory nature. Being a special jurisdiction, the High Court can require the making of reference upon a question of law which has not been settled or decided by it or by the Apex Court.

(Para 3)

Income Tax Act, 1961—*S.* 256(2)—*Mere admission of—Appeal in the Apex Court without a stay order cannot be held to be a question of law requiring the direction for making a reference in terms of sub-section* 2 *of Section* 256 *of the Act.*

Held, that the mere admission of appeal in the Hon'ble Supreme Court without even staying the operation of the Judgment of this Court cannot be held to be a question of law requiring the direction for making a reference in terms of the sub-section 2 of Section 256 of the Act.

(Para 3)

R. P. Sawhney, Senior Advocate with Aradhana Sawhney, Advocate, *for the Petitioner.*

None, *for the Respondent.*

ORDER

R. P. Sethi, J.

(1) Heard.

(2) By means of this application filed under sub-section 2 of Section 256 of the Income Tax Act (for short the 'Act') a prayer is