(2)(i) of Bihar Annul Finance Act intended to effect a temporary amendment in the previous definition of the word "dealer" in cl(c) of s. 2 of the Act. The contention is therefore repelled.

It was also submitted that the assent of the President was not given to the Bihar Annual Finance Act 1950. In our opinion that submission is equally without force because tax on sale of goods is a matter entirely within entry 54 of the State List and the amendment made in the definition of the word "dealer" in the Act did not require the assent of the President.

In our opinion the appeals and the petitions under Art. 32 are without merit and are therefore dismissed with costs. One hearing fee.

Appeals and writ petitions dismissed.

THE ACCOUNTANT GENERAL, BIHAR AND ANOTHER

v.

N. BAKSHI

(B. P. SINHA, C. J., J. L. KAPUR, M. HIDAYATULLAH, J. C. SHAH and J. R. MUDHOLKAR, JJ.)

Indian Civil Service—Conditions of service—Passage benefits—Statutory right—Constitutional guarantee—Cancellation of passage benefits under rule making power—Validity—"Remuneration", meaning of—Superior Civil Services (Revision of pay and pension) Rules, 1924—Government of India Act, 1935 (25 & 36 Geo. 5, Ch.42), s. 247 (1) —Indian Independence Act, 1947 (10 & 11 Geo. 6, Ch. 30), ss. 10 (2), 19(4)—All India Services Act, 1951 (61 of 1951), ss. 3,4—All India Services (Overseas pay, passage and leave salary) Rules, 1957, r.3—Constitution of India, Art. 314.

Under the Superior Civil Services (Revision of Pay and Pension) Rules, 1924, framed by the Secretary of State for India-in-Council under the provisions of the Government of India Act, 1919, members of the Indian Civil Service and their wives and children were entitled to passage benefits which

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were made part of the salary or remuneration. By an amendment made in the Rules in 1926 the passage benefits for purposes of administrative convenience ceased to be a part of the salary and became allowances or privileges. They were separately credited to the account of members of the Indian Civil Service and debited as and when they were availed of out of the general revenues of the State. The conditions of service to which members of the Indian Civil Service were entitled under the Government of India Act, 1919, were guaranteed to them by s.247(1) of the Government of India Act, 1935, and this guarantee was confirmed by s. 10(2) of the Indian Independence Act, 1947. By Art. 314 of the Constitution of India persons who were appointed by the Secretary of State to a civil service of the Crown in India and continued on and after the commencement of the Constitution to serve under the Government of India or of a State were to receive from the Government of India and the Government of the State which they were from time to time serving, the same conditions of service as respects remuneration, leave and pension which they were entitled to immediately before such commencement. On February 5, 1957, the Government of India framed, in exercise of the powers conferred by the All India Services Act, 1951, the All India Services (Overseas Pay, Passage and Leave Salary) Rules, 1957, by r. 3 of which the passage benefits provided by the Rules of 1924, as amended in 1926, ceased, with retrospective effect from July 12, 1956, to apply to the members of the Indian Civil Service. The respondent who was admitted to the Indian Civil Service in 1924 and continued to serve in the State of Bihar after independence challenged the validity of the rule.

Held, that r. 3 of the All India Services Overseas Pay, Passage and Leave Salary Rules, 1957, was *ultra vires*.

The right to passage benefits was a part of the remuneration earned by the members of the Indian Civil Service, and as the conditions of service as to remuneration had been guaranteed by Art. 314 of the Constitution of India, the Central Government in exercise of its rule making power could not destory or cancel a constitutional guarantee.

The word "remuneration" in Art. 314 of the Constitution explained.

R. v. *Postmaster General*, (1876) 1 Q.B.D. 658, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 704 of 1957.

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Appeal from the judgment and order dated March 11, 1957, of the Patna High Court, in Misc. Judicial Case No. 40 of 1957.

M. C. Setalvad, Attorney-General for India, *R. Ganapathy Iyer R. H. Dhebar* and *T. M. Sen*, for the appellants.

S. P. Verma, for the respondent.

1961. November 21. The Judgment of the Court was delivered by

Shah J.

SHAH, J.—This is an appeal against the judgment of the High Court of Judicature at Patna from an order commanding the Accountant General of Bihar, Ranchi, to pay certain passage allowance due under the Superior Civil Services (Revision of Pay and Pension) Rules, 1924, to the wife and the children of the respondent.

After passing the competitive examination held in London in August, 1924 the respondent N. Bakshi was admitted in November, 1924 to the Indian Civil Service and was, after his arrival in India, posted in the Province of Bihar. He continued to serve in the State of Bihar after independence.

On February 3, 1956, the respondent enquired of the Accountant General of Bihar about the number of passages to which he and the members of his family were entitled under the Superior Civil Services (Revision of Pay and Pension) Rules, 1924—hereinafter called the Statutory Rules. The The Accountant General, by letter dated March 6, 1956, stated that £284-6 s. stood in the respondent's credit £ 341-3-5d. stood in the account of his wife and £ 138 stood credited in the separate accounts of each of his four children. The respondent then arranged to travel to the United Kingdom and on June 20, 1956, obtained "passage certificates" from the Accountant General, Bihar. On July 12,1956, the respondent was informed that the Govt. of India were

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of the opinion that the passage benefits admissible to officers of Indian domicile under the said Statutory Rules, were inconsistent with the existing circumstances and it was decided, with effect from the date of issue of the order that the benefits shall cease and the passage accounts of Indian Officers of the former Secretary of State Services shall be closed and "passage credit" left over will lapse to the Government.

On February 5, 1957, the Government of India framed, in exercise of the powers conferred by sub-s. (1) of s. 3 of the All India Services Act, 61 of 1951, the All India Services (Overseas Pay, Passage and Leave Salary) Rules, 1957. By cl. 3 of the Rules passage benefits provided by the statutory Rules ceased with retrospective effect from July 12, 1956, to apply to the members of the Indian Civil Service. The appellant protested against the cancellation of the passage benefits for himself and the members of his family. The Government of India waived the original order of July 12, 1956, in favour of the respondent and ordered that he be granted passage benefit for himself but declined to relax the order in favour of the wife and children of the respondent. The respondent accompanied by his wife and children proceeded to the United Kingdom as originally arranged and on his return filed a petition under Art. 226 of the Constitution for a writ in the nature of *mandamus* against the Accountant General, Bihar, commanding him to pay the prescribed passage money in respect of the respondent's wife and children out of the amounts which stood to their credit in the General Passage Fund Account and to issue appropriate direction, order or writ in that behalf. This petition was granted by the High Court and a writ of *mandamus* as prayed was issued. The Accountant General and the Union of India have appealed to this Court against the order with certificate of fitness granted by the High Court.

To appreciate the grounds on which the impugned order was made it is necessary to refer to the Statutory Rules for passage benefit framed in 1924 by the Secretary of State in Council and the amendments thereof in the light of constitutional development since that date.

The Statutory Rules were framed by the Secretary of State for India-in-Council under s. 96B(2) and (3) of the Government of India Act, 1919, on December 9, 1924. Rule 12 of the Statutory Rules provides :

> "12. In addition to the pay prescribed by these Rules passage pay shall be granted at the rates and subject to the conditions set out in Schedule IV, to the members of the services and holders of appointments enumerated in Appendix A to that Schedule."

Schedule IV appended to the Regulations set out an elaborate scheme for maintaining accounts of the passage pay and for disbursement thereof. Regulations 3, 5, 6(1), 8, 9 and 14, which are the material regulations stood as follows :—

> "3. There shall be payable to every officer with effect from the 1st day of April, 1924 passage pay at the rate of Rs. 50 per mensem or such different rate as the Governor-General in Council may by order declare to be necessary or sufficient for the purpose of the provision of the benefits conferred by these regulations."

> "5. A sum equal to the amount received by an officer as passage pay shall be deducted monthly from the officer's pay or leave salary, as the case may be, and shall be credited to a General Passage Fund to be administered by the Governor-General in Council."

> "6 (1) The maximum benefits to which officer shall be entitled shall be passages of a

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total value equal to the cost of the number of passages between Bombay and London by P. & O., 1st Class B, shown below :—

* * *

"8. A separate account shall be opened in sterling in the case of each officer, and, if such officer is married, for his wife, and, if he has children, for each child. These accounts shall be credited respectively with the cost of the passages to which the officer, his wife and children are entitled under Regulation 6

* * *"

"14. No person whosoever shall have any claim on the General Passage Fund beyond the provision of the benefits, if any, conferred on him by these regulations and any balance remaining at the credit of any person after such person has ceased to be eligible for any such benefits shall lapse to the Fund."

Passage benefit provided under Rule 12 was clearly part of the salary to be paid out of a fund called the General Passage Fund which was formed out of the passage pay.

Several amendments were made to these Rules from time to time, but we are concerned with the amendments made by Notifications No. F-178/11/1/24 dated October 5, 1925, and No. F-17-15/26 dated June 16, 1926. Rule 12, as amended, reads as follows:—

"12. In addition to the pay prescribed by these Rules, passages shall be granted, subject to the conditions set out in Schedule IV, to the members of the services and holders of appointments enumerated in Appendix A to that Schedule."

The Regulations under Sch. IV were, after the amedment, called Revision of Pay, Passage and

Pension Regulations. Original regulations 3, 4 and 5 were omitted and regulations 6, 8, 11 and 14 were amended. The effect of these amendments was that instead of allowing as part of salary, a passage pay of Rs. 50/- and carrying over that amount to the credit of the officer concerned in the General Passage Fund, by cl. 6 of the Regulations it was directed that a separate "passage account" be opened for each officer and if he be married for his wife and children, if any. Subject to Regulation 8, the accounts were to be credited respectively with the number of passages to which the officer, his wife and children were entitled under the new regulations. Within the limits of these credits, the officer was entitled to draw for himself, his wife and his children respectively the cost of a journey between a port in India and a port outside Asia. Whereas by the Rules as originally framed in 1924 an additional salary of Rs. 50/- per mensem was awarded to each officer as passage pay which was to be credited to the General Passage Fund out of which passage benefits to Officers were provided, according to the scheme of the Rules as amended in 1926, a separate passage account was to be maintained for each officer for the maximum benefits prescribed by Rule 3 and the disbursement in respect thereof were to be made of the General Revenue of the State. By the amendment made in the Rules in 1926, the passage benefit ceased to be a part of the salary and became an allowance or privilege.

The respondent obtained benefit of these passages in 1930, 1950-51 and 1952-53 for himself and the members of his family. In 1957 he was not granted the passage benefit for his wife and his children, and he has filed this petition under Art. 226 for an order that the Union of India and the Accountant General do carry out their Statutory obligations.

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The conditions of service to which members of the Indian Civil Service were entiled under the Government of India Act, 1919, were guaranteed to them by s.247(1) of the Government of India Act, 1935. That section provided:

> "247 (1). The conditions of service of all persons appointed to a civil service or civil post by the Secretary of State shall :—
>
> (a) as respects pay, leave and pension and general rights in regard to medical attendance, be such as may be prescribed by rules to be made by the Secretary of State;
>
> (b) as respects other matters with respect to which express provision is not made by this chapter, be such as may be prescribed by rules to be made by the Secretary of State in so far as he thinks fit to make such rules, and, in so far and so long as provision is not made by such rules, by rules to be made, as respects persons serving in connection with the affairs of the Federation, by the Governor-General or some person or persons authorised by the Governor-General to make rules for the purpose and, as respects persons serving in connection with the affairs of a Province, by the Governor of the Province or some person or persons authorised by the Governor to make rules for the purpose:
>
> Provided that no rule made under this sub-section shall have effect so as to give to any person appointed to a civil service or civil post by the Secretary of State less favourable terms as respects remuneration or pension than were given to him by the rules in force on the date on which he was first appointed to his service or was appointed to his post."

The proviso makes it abundantly clear that the power to make rules cannot be exercised by the

Secretary of State so as to give to any officer of the class specified terms less favourable as respects remuneration or pension than were given to him by the rules in force on the date on which he was first appointed to his service or to his post. This guarantee was confirmed by s. 10, sub-s. (2) of the Indian Independence Act, 1947, wherein it was provided, in so far as it is material, that "Every person who—

> (a) having been appointed by the Secretary of State or Secretary of State in Council, to a civil service of the Crown in India continues on and after the appointed day to serve under the Government of either of the new Dominions or of any province or part thereof; or
>
> (b) * * * *
>
> shall be entitled to receive from the Governments of the Dominions and Provinces or parts which he is from time to time serving or, as the case may be * * * the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters or as the case may be, as respects the tenure of his office, or rights as similar thereto as changed circumstances may permit, as that person was entitled to immediately before the appointed day."

The expression "remuneration" was defined in s. 19(4) of that Act as inclusive of leave pay, allowances and the cost of any privileges or facilities provided in kind. By Art. 314 of the Constitution, persons who were appointed by the Secretary of State or Secretary of State in Council to a civil service of the Crown in India and continued on and after the commencement of the Constitution to serve under the Government of India or of a State were to receive from the Government of India and the Government of the State which they were from time to time

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serving, the same conditions of service as respects remuneration leave and pension which they were entitled to immediately before such commmencement. The Parliament of India enacted the All India Services Act, 61 of 1951, to regulate the recruitment, and the conditions of service of persons appointed, to the all India Services common to the Union and the States, and by s. 3 of that Act the Central Government was authorised to make rules for the regulation of recruitment, and the conditions of service of persons appointed, to the All India Service. By s. 4 it was provided that all rules in force immediately before the commencement of the Act and applicable to an All-India Service were to continue to be in force and were to be deemed to be rules made under the Act. On September 8, 1954, the Central Government framed rules called the Indian Administrative Services Recruiting Rules and by Rule 2(d) the members of the Indian Civil Service who continued to serve on and after the commencement of the Constitution were to be regarded for the purpose of the rules as members of the Indian Administrative Service. On February 15, 1957, the All India Services (Overseas Pay, Passage and Leave Salary) Rules, 1957, were promulgated in exercise of the powers conferred by sub-s (1) of s.3 of the All India Services Act, 1951, and thereby passage benefits in favour of the members of the Indian Administrative Service, who were originally members of the Indian Civil Service were cancelled.

The only question which falls to be determined in this appeal is whether cl. 3 of the All India Services (Overseas Pay, Passage and Leave Salary) Rules, 1957, was competently enacted, having regard to the guarantee contained in Art. 314 of the Constitution as to the conditions of service as respects remuneration, leave and pension of the persons appointed by tht Secretary of State or Secretary of State for India in Council to a civil service of the Crown in India.

Since the All India Services Act was enacted there is manifestly no existing service known as the Indian Civil Service. The members of the Indian Civil Service who were appointed by the Secretary of State for India became members of the Indian Administrative Service, but their rights in the matter of conditions of service as respects remuneration, leave and pension stood guaranteed by Art. 314.

In dealing with the status of the members of the former Indian Civil Service since the Indian Independence Act, 1947, this Court in *State of Madras* v. *K. M. Rajagopalan* (1) held :

> that (1) the conferral of independence on India brought about an automatic and legal termination of service on the date of Independence;
>
> (2) all persons previously holding civil posts in India are deemed to have been appointed and hence to continue in service, except those governed by general or special orders arrangements affecting their respective cases;
>
> (3) the guarantee about prior conditions of service and the previous statutory safe guards relating to disciplinary action continues to apply to those who are thus deemed to continue in service but not to others; and
>
> (4) those previously holding civil posts in India had the right, and were in fact given the option, of declining to "continue in service" under the new regime and in the event of their exercising that option they ceased to serve on and from the date of the passing of the constitution.

(1) [1955] 2 S. C. R. 541.

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Under the Statutory Rules framed in 1924 passage benefits granted to persons employed in the Indian Civil Service, their wives and children were expressly made part of the salary or remuneration. Under the amendment of 1926, these passage benefits acquired the character of allowance, privilege or facility of office. By the Act of 1935 (s. 247) privileges, *inter alia* as to remuneration under the Government of India Act of 1919 were expressly guarnteed in favour of the members of the Indian Civil Service. By the Indian Independence Act 1947, a similar guarantee in respect of conditions of service as respects remuneration was also conferred and by s. 19 (4) of that Act remuneration was defined as inclusive of pay, allowances or privileges or facilities payable in kind. By Art. 314 of the Constitution, the conditions of service, prior to the Constitution as respects remuneration, leave and pension of the members of the Indian Civil Service were protected.

There is no definition of 'remuneration' in the Constitution, but that is not a ground for holding that the expression is used in any limited sense as merely salary. The expression 'remuneration', in its ordinary connotation means "reward, recompense, pay, wages or salary for service rendered" In *R.* v. *Postmaster General* (1) Blackburn, J., observed, "I think the word 'remunreation'..... means a *quid pro quo*. If a man gives his services; whatever consideration he gets for giving his services seems to be a remuneration for them. Consequently, I think if a person was in receipt of a payment, or in receipt of a percentage, or any kind of payment which would not be actual money payment, the amount he would receive annually in respect of this would be remuneration." The expression 'remuneration' appears to have been used in the Constitution in this wide connotation. As already observed, the right to passage

(1) (1876) I Q. B. D. 658.

was originally made a part of the salary, but under the Rules framed in 1926, the provision for setting apart a fixed sum of money as salary out of the General Passage Fund was altered and passages were credited to the account of members of Civil Services and debited as and when they were availed of out of the general Revenue of the State. This alteration was made merely for administrative convenience and did not alter the character of the benefit. Under the Rules of 1924, the provision for passage was part of the remuneration and it continued to be such even after the amendment of the Rules in 1926.

The right to passage benefits was statutory, and was under the Indian Independence Act in the nature of an allowance, or in any event privilege or facility paid in kind. It was expressly made part of the remuneration earned by the members of the Indian Civil Service. The conditions of service as to remuneration having been guaranteed, the right to this benefit remained guaranteed to those members of the Indian Civil Service who were entitled to it before the Constitution. This guarantee which was continued in force even after the commencement of the Constitution was for the first time by Rules made in June 1957 by retrospective amendment of the Statutory Rules from July 12, 1956 sought to be cancelled. But the Central Government in exercise of Rule making power was incompetent to destroy or cancel a constitutional guarantee.

The High Court was, therefore, in our judgment, right in holding that rule 3 of the All India Services (Overseas Pay, Passage and Leave Salary) Rules, 1957, was *ultra vires*.

In that view of the case this appeal fails and is dismissed with costs.

Appeal dismissed.