



CHAPTER 4

An Act to provide for the payment out of moneys provided by Parliament of pensions to certain persons who were serving as judges in India before the fifteenth day of August, nineteen hundred and forty-seven, or as judges in Burma before the fourth day of January, nineteen hundred and forty-eight, and for purposes connected with the matters aforesaid.

[16th December 1948.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) The Secretary of State may grant a pension payable out of moneys provided by Parliament to any European who—

Pensions to barrister judges of British India High Courts not otherwise pensionable.

(a) was not a member of the Indian Civil Service and has not been and is not to be granted a pension payable by any Government in India or Pakistan; and

(b) was, immediately before the fifteenth day of August, nineteen hundred and forty-seven, a judge of a High Court in British India and had not before that date gone on leave pending retirement; and

(c) retires, either before or after the passing of this Act.

(2) The annual amount of a pension granted under this section to a person shall not be less than five hundred pounds nor more than the annual amount of the greatest pension which might have been granted to him under the Government of India (High Court Judges) Order, 1937, if the Indian Independence Act, 1947, had not passed and he had continued to serve in the office which he

10 & 11 Geo. 5.
c. 30.

held immediately before the said fifteenth day of August until he attained the age of sixty years.

(3) Subject to the provisions of subsection (2) of this section, the annual amount of a pension granted under this section to a person shall be ascertained as follows:—

- (a) his service shall be computed and increased by two years;
- (b) the annual amount of the maximum pension which, if the Indian Independence Act, 1947, had not passed, would have been appropriate in view of the nature of his service shall be ascertained in accordance with the Schedule to this Act; and
- (c) the annual amount of the pension granted under this section shall be one one-hundred-and-forty-fourth of the amount ascertained under paragraph (b) of this subsection for each completed month of his service as computed and increased under paragraph (a) of this subsection.

Supplementary pensions to European I.C.S. judges of British India High Courts.

2.—(1) The Secretary of State may grant a pension payable out of moneys provided by Parliament to any European who,—

- (a) was a member of the Indian Civil Service; and
- (b) was, immediately before the fifteenth day of August, nineteen hundred and forty-seven, a judge of a Chartered High Court in British India other than that at Nagpur, and had not before that date gone on leave pending retirement; and
- (c) retires, either before or after the passing of this Act.

(2) A pension under this section shall be at the annual rate of one pound seven shillings and nine and one-third pence for each completed month of service in a Chartered High Court, other than that at Nagpur:

Provided that the annual amount of a pension under this section shall not exceed two hundred pounds.

Supplementary pensions to European barrister judges of Federal Court and British India High Courts.

3.—(1) The Secretary of State may grant a pension payable out of moneys provided by Parliament to the last person who held the office of Chief Justice of India before the fifteenth day of August, nineteen hundred and forty-seven.

(2) The Secretary of State may grant a pension payable out of moneys provided by Parliament to any European who—

- (a) was not a member of the Indian Civil Service but has been or is to be granted a pension payable by a Government in India or Pakistan; and

(b) was, immediately before the fifteenth day of August, nineteen hundred and forty-seven, a judge of any High Court in British India and had not before that date retired or gone on leave pending retirement; and

(c) retires, either before or after the passing of this Act.

(3) A pension under this section shall be at such rate as the Secretary of State may, with the approval of the Treasury, determine in the particular case.

4.—(1) The Secretary of State may grant a pension payable out of moneys provided by Parliament to any European who—

(a) was not a member of the Indian Civil Service or the Burma Civil Service (Class I); and

(b) was, immediately before the fourth day of January, nineteen hundred and forty-eight, a judge of the High Court at Rangoon; and

(c) retires, either before or after the passing of this Act.

(2) The annual amount of a pension under this section shall be such amount as will, when added to the annual amount of the pension granted or to be granted by the Government of Burma to the person in question, amount to the sum specified in subsection (3) of this section or to the annual amount of the maximum pension which might have been granted to him under the Government of Burma (High Court Judges) Order, 1937, if the Burma Independence Act, 1947, had not been passed and he had continued to serve in the office which he held immediately before the said fourth day of January until he attained the age of sixty years, whichever is the less.

Supplementary
pensions to
European
barrister
judges of
High Court
at Rangoon.

11 & 12 Geo. 6.
c. 3.

(3) The said sum is the sum which bears to one thousand two hundred pounds the same proportion as the number of completed months in the service of the person in question, increased by two years, bears to the number of completed months in eleven and a half years.

5.—(1) Subject to the provisions of subsection (2) of this section, the service of a person shall be computed—

(a) for the purposes of sections one and two of this Act, in the same manner as his service for pension would fall to be computed under the Government of India (High Court Judges) Order, 1937, for the purposes of the Third Schedule to that Order;

(b) for the purposes of the last preceding section, in the same manner as his service for pension would fall to be

Computation
of service.

computed under the Government of Burma (High Court Judges) Order, 1937, for the purposes of the First Schedule to that Order:

Provided that service as an acting judge or an additional judge shall be taken into account notwithstanding that there is no subsequent service in a substantive appointment.

(2) If, in the opinion of the Secretary of State, service in a court in India or Pakistan created after the fifteenth day of August, nineteen hundred and forty-seven, ought to be treated for the purposes of section one or section two of this Act as if it were service in a court which was a High Court in British India, it shall be so treated, and references in the said sections one and two, in the Schedule to this Act, and in the Government of India (High Court Judges) Order, 1937, as applied by that Schedule, to service, or to service in a particular court or particular courts, shall be construed accordingly.

Other Provisions as to pensions under this Act.

6.—(1) Pensions granted under this Act shall be in addition to any lump sum grants made to the persons to whom the pensions are granted out of moneys provided by Parliament by way of compensation for loss of office.

(2) Any pension granted under this Act shall be for the life of the person to whom it is granted.

(3) Any pension granted under this Act to the last person who held the office of Chief Justice of India before the fifteenth day of August, nineteen hundred and forty-seven, shall begin to accrue as from the date on which he ceased to be entitled to salary as chairman of the Arbitral Tribunal set up by the Arbitral Tribunal Order, 1947, made by the Governor General of India under section nine of the Indian Independence Act, 1947.

(4) Any pension granted under this Act to any other person shall begin to accrue as from the date on which he ceased to be entitled to salary as a judge of a court in British India, India, Pakistan or Burma, as the case may be.

(5) The Secretary of State may permit pensions granted under this Act to be commuted to the extent, in the circumstances and on the terms for the time being provided for by the appropriate India, Pakistan or Burma rules as respects the commutation of pensions payable out of any revenues of, or any part of, those countries respectively to persons who have been judges of High Courts or other similar courts, and any sum required to be paid by way of commutation of the whole or any part of any pension granted under this Act shall be paid out of moneys provided by Parliament.

In this subsection, the expression "the appropriate India, Pakistan or Burma rules" means the rules prevailing under the law of India, of Pakistan or of Burma according as the last

court (being the Federal Court or a court in British India, India, Pakistan or Burma) in which the person in question served as a judge is situate in the territories of India, Pakistan or Burma.

7.—(1) In this Act, except so far as the context otherwise Interpretation. requires—

“European” means a person who, in the opinion of the Secretary of State, would, under the practice of the Secretary of State prevailing before the fifteenth day of August, nineteen hundred and forty-seven, for the purpose of deciding whether a person was entitled to sterling overseas pay, have fallen to have been treated as being of non-Asiatic domicile ;

“High Court in British India” means any of the courts which, at any time before the fifteenth day of August, nineteen hundred and forty-seven, were High Courts in British India for the purposes of chapter II of Part IX of the Government of India Act, 1935;

“Chartered High Court” means a High Court in British India, other than a Chief Court or the Court of a Judicial Commissioner;

26 Geo. 5 &
1 Edw. 8. c.

“Judge” includes a chief justice, an acting chief justice, an acting judge and an additional judge.

(2) References in this Act to the retiring of a person include references to the coming to an end of his appointment as an acting judge or an additional judge without his receiving any further appointment as a judge.

(3) References in this Act to the Government of India (High Court Judges) Order, 1937, are references to that Order as in force immediately before the fifteenth day of August, nineteen hundred and forty-seven.

(4) References in this Act to the Government of Burma (High Court Judges) Order, 1937, are references to that Order as in force immediately before the fourth day of January, nineteen hundred and forty-eight.

8. This Act may be cited as the Judges Pensions (India and Short Title. Burma) Act, 1948.

SCHEDULE

Section 1.

ASCERTAINMENT OF MAXIMUM PENSION WHICH WOULD HAVE BEEN
APPROPRIATE

1. This Schedule shall have effect for ascertaining, for the purposes of subsection (3) of section one of this Act, the annual amount of the maximum pension which, if the Indian Independence Act, 1947, had not passed, would, in the case of a person who is to be granted a pension under that section, have been appropriate in view of the nature of the service.

The said annual amount is hereinafter referred to as "the maximum" and the person who is to be granted the pension is hereinafter referred to as "the judge".

2. If the judge has not rendered at least one completed year of service in any of the grades mentioned in paragraph 5 of Part I of the Third Schedule to the Government of India (High Court Judges) Order, 1937, the maximum shall be taken to be seven hundred and fifty pounds.

3. If the judge has rendered service for not less than one completed year in any of the said grades, the maximum shall be taken to be the amount stated in the last column of the Table in paragraph 6 of the said Part I in relation to the highest of those grades in which the judge has rendered service for not less than one completed year.

4. Paragraphs 7 to 9 of the said Part I (which relate to judges with service in two or more grades or with acting service in certain capacities) shall apply in relation to the preceding paragraphs of this Part of this Schedule as they apply in relation to paragraphs 5 and 6 of the said Part I.

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