Tee Soon Kay v Attorney-General
[2007] SGCA 27

Case Number : CA 107/2006

Decision Date : 04 May 2007

Tribunal/Court : Court of Appeal

Coram : Lai Siu Chiu J; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Ramayah Vangatharaman (Wee Ramayah & Partners) for the appellants; Walter Woon, Owi Beng Ki and Leonard Goh Choon Hian (Attorney-General's Chambers) for the respondent

Parties : Tee Soon Kay — Attorney-General

Constitutional Law – Constitution – Interpretation – Whether public officer's right to pension protected under Constitution – Articles 112, 113, 115 Constitution of the Republic of Singapore (1999 Rev Ed)

Contract – Formation – Acceptance – Public officers voluntarily opting irrevocably to convert from pension scheme to Central Provident Fund scheme – Whether option entered into by public officers binding

Statutory Interpretation – Construction of statute – Public officers voluntarily opting irrevocably to convert from pension scheme to Central Provident Fund scheme and then attempting to revert to pension scheme after more than 30 years – Whether public officers having right to pension under s 9(d) Pensions Act such that condition of irrevocability governing conversion from pension scheme to CPF scheme ultra vires – Sections 8(1), 9(d) Pensions Act (Cap 225, 2004 Rev Ed)

4 May 2007 Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the court):

Introduction

1 This is an appeal by Mr Tee Soon Kay, together with and on behalf of 99 public officers (collectively, "the appellants"), against the trial judge's decision in Originating Summons No 618 of 2006 ("the OS") holding, *inter alia*, that the appellants were not entitled to revert to the pension scheme as they had opted to convert from the pension scheme to the Central Provident Fund ("CPF") scheme in 1973.

Background

2 The appellants had all been appointed to the public service prior to 1 December 1972. They were Division III and IV officers. When first employed, they were on the pension scheme and were under the Pensions Act (Cap 55, 1970 Rev Ed) which is now the Pensions Act (Cap 225, 2004 Rev Ed) ("the Act"). As counsel for the appellants, Mr Ramayah, has referred throughout to the latest versions of the Act as well as the Constitution of the Republic of Singapore (1999 Rev Ed) ("the Constitution"), we shall rely on them in making our determination. In any event, the substance of the various provisions and articles has remained the same during the relevant period.

3 On 14 May 1973, the Permanent Secretary (Finance-Budget) ("PS (Finance)") issued a directive entitled Finance Circular No 8 of 1973 ("FC No 8/73"). Pursuant to FC No 8/73, the appellants had to exercise an option ("the 1973 Option") to either remain on the existing pension

scheme or convert to the CPF scheme. It was stated in the option form that the 1973 Option, once exercised, was irrevocable. Conversion to the CPF scheme presented two further options, as follows:

(a) to convert to the CPF scheme with accrued pension benefits frozen and payable as a lump sum on retirement under pensionable circumstances; or

(b) to convert to the CPF scheme with accrued pension benefits payable as commuted gratuity and reduced annual pension on retirement under pensionable circumstances.

Option (b) was applicable only to officers with not less than ten years' pensionable service.

4 The appellants chose to convert to the option described in [3(a)] above. However, some 33 years later, in October 2005, the majority of the appellants wrote to the relevant government authorities expressing their desire to repay the Government the total amount paid by the Government to each of their CPF fund accounts with interest in accordance with s 9(*d*) of the Act. By doing so, they wished to have their respective CPF membership period count for the purposes of receiving a pension upon retirement instead. The appellants' requests were rejected by the Government, thus giving rise to the present proceedings.

5 The appellants commenced the OS and sought the following declarations:

(a) that the purported condition of irrevocability in the 1973 Option was *ultra vires*, null and void, and of no effect; and

(b) that the appellants were entitled to rejoin the pension scheme, and to have their full service in pensionable office counted for the purposes of the Act, pursuant to the terms of s 9(*d*) of the Act.

6 The impact of this court's decision will not be limited to the 100 appellants on the record. According to the affidavit of one Goh Soon Poh dated 3 May 2006 filed on behalf of the respondent, a total of 7,523 public officers (out of 12,158) participated in the 1973 Option. Out of these 7,523 officers, 927 are still in the civil service. Given the important issues that were raised as well as the additional consideration that a great many public officers would be affected by the outcome of this appeal, this court reserved judgment in order to consider the relevant legal material as well as arguments before it in greater detail. We now proceed to set out the detailed grounds for our decision.

Proceedings in the High Court

7 The trial judge ("the Judge") held that s 9(*d*) of the Act could not aid the appellants in their attempt to return to the pension scheme as it did not create any right to a pension (see *Tee Soon Kay v AG* [2006] 4 SLR 385 ("the GD")). Section 9(*d*) was simply a provision which barred the payment of a pension if the preconditions were not met. That the appellants had no right to a pension was further buttressed by s 8(1) of the Act which provided that no officer shall have "an absolute right" to a pension. Furthermore, the legislative history of s 9(*d*) showed that it had nothing to do with a pensionable officer's right to return to the pension scheme by paying back the amounts made by the Government into their respective CPF accounts. Instead, it was clear that s 9(*d*) was enacted to ensure that the Government did not pay twice for retirement benefits.

8 The appellants also argued in the court below that the PS (Finance) had no legislative authority to bar public officers to whom the Act applied from the pension scheme and to make the

exercise of the 1973 Option irrevocable. In support of this argument, the appellants pointed to the introduction of s 6(3) of the Act (s 3(1A) at the material time) and the promulgation of reg 3 of the Pensions (Conversion to the Central Provident Fund Scheme) Regulations 1986 (GN No S 237/1986) ("the 1986 Regulations") as an acknowledgment by the Government that it did not have the power in 1973 to stipulate that the decision to convert to the CPF scheme was irrevocable. Section 6(3) of the Act provides as follows:

> The President may, in making regulations under this section, provide for any officer or class of officers holding pensionable offices to opt for the provident fund scheme applicable to non-pensionable employees of the Government under the Central Provident Fund Act (Cap. 36) and for the terms and conditions of such option.

9 Regulation 3 of the 1986 Regulations provides as follows:

> Option.
>
> 3.—(1) An officer to whom these Regulations apply may be given an option to convert to the provident fund scheme applicable to non-pensionable employees of the Government under the Central Provident Fund Act.
>
> (2) The option exercised by the officer shall be irrevocable except that he may be required to revert to the pensionable service if he is appointed or transferred to a scheme of service which is excluded from these Regulations.

10 The Judge dismissed the appellants' argument on the basis that it could not "without more, be said that the [PS (Finance)] lacked the said power merely because the position regarding conversion to the CPF scheme was subsequently put on a statutory footing in 1986" (at [29] of the GD). The Judge observed that "[w]hether the [PS (Finance)] lacked the power to stipulate that a decision under the 1973 Option was irrevocable depends on the law as it stood at the material time" and that prior to the introduction of the 1986 Regulations, "the exercise by senior public officers of this option had been implemented through internal directions and it was thought that as a matter of good governance, issues affecting public officers should be made absolutely transparent by the 1986 amendments" (*ibid*).

11 The Judge also held that the appellants' reliance on Art 112 of the Constitution to support their argument that they had a right to a pension was misplaced because Art 112 merely directed the mind of the pension-awarding authority to the law that was to be applied should a pension be granted to a public officer. Furthermore, Art 112(3) of the Constitution envisaged that a public officer might opt for different forms of retirement benefits under the law and the law applicable to the option made by that public officer was deemed to be more favourable than any other law for which he might have opted.

12 Finally, the Judge accepted the respondent's argument that the appellants were estopped from resiling from their decision to convert to the CPF scheme and that "it [was] far too late to set the clock back" (at [33] of the GD). The Government had made the requisite contributions to the appellants' CPF accounts for the past 33 years and had not made any financial provision for the appellants' pension benefits during that same period. In the light of the Judge's finding on whether the appellants could be said to have a right to a pension, the appellants' argument that estoppel could not arise in relation to the right to a pension, which was conferred by statute and the Constitution, also failed.

The appellants' arguments

13 Mr Ramayah argued that even though s 8(1) of the Act stated that no officer shall have an "absolute right" to a pension, this could not be read as saying that a public officer had "no right" to a pension. A public officer had a right to a pension, albeit a right which was contingent upon retirement in pensionable circumstances. Some of the instances whereby an officer would lose his or her right to a pension would be if he or she was dismissed, was found to be guilty of "negligence, irregularity or misconduct" under s 8(2) of the Act, or was adjudged a bankrupt under s 17 of the Act.

14 In support of their argument that public officers have a right to a pension, the appellants pointed to the Act which speaks of pensions "which *would* be granted" [emphasis added] to the pensioner (s 17(1) of the Act) or "which the pensioner *would* have been entitled ... to" [emphasis added] (s 18(3) of the Act) in contrast to the permissive tenor of the corresponding Sri Lankan legislation which speaks of pensions which "may be awarded" or "may be granted" that was considered by the Sri Lankan Supreme Court in *Attorney-General v Abeysinghe* (1975) 78 NLR 361 ("*Abeysinghe*"). With respect, we are of the view that this particular argument is unpersuasive. Both ss 17(1) and 18(3) of the Act relate to situations where a pension would *not* be granted; neither, in other words, when read wholly and in context, points to a legal right to a pension as such.

15 The appellants also argued that a public officer's right to a pension was constitutionally entrenched. In support of this contention, the appellants quoted a speech made by the then Prime Minister of Singapore in the Legislative Assembly during the debates on the Yang di-Pertuan Negara's address on 21 July 1959, where he stated thus (*Singapore Parliamentary Debates, Official Report* (21 July 1959) vol 11 at col 367):

> And for that reason, we agreed to allow the Constitution to protect the pension rights of our civil service. When they join the service, it is necessary for them to know that, if they devote their whole life to the administration of the State, at the end of it they can go out to pasture with reasonable comfort.

16 The appellants argued that Art 112 of the Constitution (reproduced below at [95]) clearly contemplated that the Act conferred pension rights. In particular, the appellants argued that Art 112 stated that when a pension was granted, it must be in accordance with the law set out in that article, *ie*, the law in force on the relevant day, or any law that was not less favourable. They argued that it would be odd to say that Art 112 was enacted to only preserve the applicable law if and when an award was made but until then a public officer had no right to a pension even if he retired in pensionable circumstances. Furthermore, it was argued, the heading of Art 112 stated "protection of pension rights".

17 The appellants further contended that the Judge had erred in holding that Art 112(3) of the Constitution applied in the present instance. The Judge had held that Art 112(3) envisaged that a public officer might opt for different forms of retirement benefits under the law, and the law as laid down by the then Central Provident Fund Act (Cap 121, 1970 Rev Ed) ("the then CPF Act") was deemed by Art 112(3) to be more favourable to the appellants than the law governing the pension scheme (see the GD at [31]–[32]). Counsel for the appellants argued that Art 112(3) did not encompass the CPF scheme because the CPF scheme did not fall within the words "pension, gratuity or other like allowance" laid down in Art 112(1).

18 The appellants next relied on Art 115(1) of the Constitution (reproduced below at [96]) on the basis that it speaks of the public officer's "claim" to any pension, gratuity or other like allowance, with "claim" being defined as "right" in *The Concise Oxford Dictionary of Current English* (Oxford

University Press, 7th Ed, 1982) (J B Sykes ed).

19 Mr Ramayah added that Art 113 of the Constitution (reproduced below at [103]) supported the view that there were pension rights which did not depend on discretion because Art 113 confined itself to cases where the award was dependent on the *discretion* of the authority or person vested with the power to award a pension under any law.

20 The appellants accept that if they fail to convince this court that a public officer has a *legal right* to a pension, their appeal fails *in limine*. However, even if this court is persuaded by their argument that a public officer has a legal right to a pension, the appellants still face the hurdle of persuading this court why they should not be bound by the terms of the 1973 Option they had entered into.

21 The appellants argued that the purported condition of irrevocability pursuant to the 1973 Option was *ultra vires*, null and void, and of no effect because the Act applied to the appellants and, consequently, s 9(*d*) thereof stipulated that if a public officer to whom the Act applied belonged to the CPF scheme, he or she could only have his or her service during the CPF period count for the purpose of the Act in joining or re-joining the Pension scheme if the Government was repaid its contributions to the CPF scheme. The appellants argued that the PS (Finance) was not empowered to bar public officers, to whom the Act applied, from membership of the pension scheme and to make the exercise of the option "irrevocable". The appellants argued that this was because pension rights were *constitutionally entrenched*. In the circumstances, such rights were not waivable as such waiver would undermine the protection accorded to pension rights under the Constitution.

22 The appellants also argued that the PS (Finance) had no legislative authority because, as at 1973, there were no regulations made pursuant to the Act that permitted an irrevocable conversion to the CPF scheme. The appellants argued that the amendment to s 3 of the Act by the insertion of the new s 3(1A) and the promulgation of reg 3 of the 1986 Regulations was a recognition of the fact that the Government did not have the power in 1973 to require the appellants to opt out of the pension scheme irrevocably.

The respondent's arguments

23 Counsel for the respondent, Second Solicitor-General Walter Woon, argued that it was incorrect for the appellants to say that they had a right to a pension in view of, *inter alia*, s 8(1) of the Act. Prof Woon directed this court's attention to a long line of authorities which have held that the grant of a pension was at most a legitimate expectation rather than an entrenched right or entitlement.

24 In response to the appellants' contention that a public officer's right to a pension was constitutionally entrenched, Prof Woon contended that nowhere in the Constitution was it stated that a public officer had a right to a pension. Indeed, even though the appellants asserted that Art 113 contemplated that there were pension rights which did not depend on discretion, the appellants did not point to any particular instances where public officers were entitled to a pension as of right.

25 Furthermore, the respondent argued that Art 112(1) of the Constitution, which states that the law applicable to any pension granted to a public officer shall be that in force on the relevant day or any later law not less favourable, only applied if and when a public officer has *already been granted* a pension. Hence, Art 112(1) simply protected a public officer against future legislation that adversely affected the pension that had *already been awarded* to him or her.

26 The respondent conceded, however, that the Judge might have erred in holding that Art 112(3) of the Constitution envisaged that a public officer might opt for different forms of retirement benefits under the law, and that the law as laid down by the then CPF Act was deemed by Art 112(3) to be more favourable to the appellants than the law governing the pension scheme because the CPF scheme did not fall within the words "pension, gratuity or other like allowance" in Art 112(1).

27 The respondent also argued that Art 115(1) of the Constitution was wholly irrelevant to the issue at hand, which was whether the appellants could be said to have a right to a pension. Prof Woon argued that Art 115(1) was intended as a transitional arrangement for civil servants in service at the time Singapore attained self-governance and was enacted to ensure that the terms of service of existing civil servants at the time Singapore attained self-governance would not be prejudiced.

28 In any event, the respondent contended that it was unclear how Art 115(1) would be able to assist the appellants in their claim for a right to a pension. Art 115(1) states that a public officer's claim to a pension, gratuity or other like allowance shall not be prejudiced if he "relinquish[es] his office for the purpose of transfer to some other public office or to an office in any other public service"; in the present proceedings, the appellants had not and did not claim to have relinquished their office for some other public office.

29 In response to the appellants' argument that the PS (Finance) had no legislative authority because as at 1973, there were no regulations made pursuant to the Pensions Act that permitted an irrevocable conversion to the CPF scheme, the respondent argued that there was no need for legislation in order to give effect to the appellant's choice in 1973 to receive CPF benefits instead of a pension upon retirement, for the ordinary common law rules of contract and estoppel sufficed to bind the officers concerned and the Government.

Issues for determination in this appeal

30 The appellants are of the view that they have a right to revert from the CPF scheme to the pension scheme, and that they have the (related) right to have their period of service after 1973 (*ie*, when they had exercised the 1973 Option to be on the CPF scheme) taken into account for the purposes of computing their pension benefits, provided that, pursuant to s 9(*d*) of the Act, they refund to the Government the total amount with interest that has been paid by the Government into their CPF accounts from 1973 to the present time. In our view, the various issues that arise in this appeal can be resolved by examining:

(a) the nature of the rights conferred on a public officer by ss 8(1) and 9(*d*) of the Act and the extent to which the Constitution protects the right, if any, to a pension; and

(b) the legal effect of the 1973 Option entered into by the appellants.

The nature of the rights conferred on a public officer by the Pensions Act and the Constitution

31 Although the appellants are of the view that they are entitled to have their entire period of service, including the period they were on the CPF scheme, taken into account for the purposes of computing their pension benefits by refunding to the Government the total amount with interest that has been paid by the Government to their CPF accounts pursuant to s 9(*d*) of the Act, it is a fundamental rule of statutory interpretation that a statutory provision cannot be looked at in isolation. This principle is particularly important in the present case as s 8(1) of the Act poses a

formidable challenge to the appellants' claim because it states that no officer shall have an "absolute right" to a pension. It was therefore not surprising that the starting point for both parties was the ambit of s 8(1).

Whether there is a legal right to a pension under section 8 of the Pensions Act

32 As counsel for the appellants, Mr Ramayah, conceded – correctly, in our view – right at the outset, if this court was not persuaded that the appellants had a *legal right* to a pension pursuant to the Act, that was the end of the matter. Indeed, the issue of the *constitutional* protection of such a right would, as a consequence, *not* arise simply because there was no such right to protect to begin with.

33 Mr Ramayah also recognised, right from the outset, that he faced an uphill task in the light of s 8(1) of the Act, which reads as follows:

> *No officer shall have* an *absolute right* to compensation for past services or to any pension, gratuity or other allowance under this Act, nor shall anything in this Act limit the right of the Government to dismiss any officer without compensation. [emphasis added]

34 The use of the wording that no officer shall have an "absolute right" to a pension is to be found throughout all the pension legislation ever enacted in the Singapore context: see generally the Pensions Ordinance 1870 (SS Ord No 9 of 1870), s 4; the Pensions Ordinance 1871 (SS Ord No 1 of 1871), s 4; the Pensions Ordinance 1887 (SS Ord No 8 of 1887), s 10 (later enacted as Ordinance No 41 of the Laws of the Straits Settlements (1926 Rev Ed), s 8); the Pensions Ordinance 1928 (SS Ord No 22 of 1928), s 5 (later enacted as Cap 78, 1936 Rev Ed, s 5); the Pensions Ordinance 1956 (Ord No 22 of 1956), s 5; the Pensions Act (Cap 55, 1970 Rev Ed), s 5; and the (present) Act, s 8(1). Apart from cosmetic changes, the actual wording has remained similar in all relevant aspects.

35 A plain reading of s 8(1) suggests that a public officer has *no* legal right to a pension pursuant to the Act. This interpretation is buttressed in at least three important respects.

36 The first is the marginal note. The marginal note of s 8 itself reads: "Pensions, etc., not of right". By way of clarification, the marginal note is presently in the form of a heading in bold font, but this is really a change in form rather than substance.

37 In the Singapore High Court decision of *Ratnam Alfred Christie v PP* [2000] 1 SLR 467, Yong Pung How CJ held that marginal notes could be used as an aid to statutory interpretation. This has, in fact, long been the position in Singapore: see, for example, *Cashin v Murray* (1888) 4 Ky 435 ("*Cashin*"); *Re Tan Keng Tin* [1932] MLJ 134; and *Algemene Bank Nederland NV v Tan Chin Tiong* [1986] SLR 526.

38 In England, however, it used to be a matter of debate as to whether reference could be made to marginal notes for the purpose of shedding light upon the meaning of ambiguous provisions. The argument was that marginal notes were inserted neither by Parliament nor under the authority of Parliament but by clerks who were "irresponsible persons" empowered to make corrections to the Bills (*per* Phillimore LJ in the English Court of Appeal decision of *In re Woking Urban District Council (Basingstoke Canal) Act, 1911* [1914] 1 Ch 300 ("*Re Woking*") at 322) and could not therefore be an aid to statutory interpretation. It had also been said that headings and marginal notes were not to be looked at because they were inserted after the Bill had become law: *per* Avory J, delivering the judgment of the court in *The King v Hare* [1934] 1 KB 354 at 355. Marginal notes were therefore not regarded as part of the Act concerned in England.

39 In contrast, in the Straits Settlements decision of *Re Tan Keng Tin* ([37] *supra* at 135), Terrell J was of the view that the then English position did not apply in Singapore (which was then a colony) as marginal notes were discussed and even amended by the (then) Legislative Council and ought therefore to be treated as part and parcel of an Ordinance. Accordingly, marginal notes could be used as an aid to interpretation. This was also the view expressed by Ford CJ in *Cashin* ([37] *supra*). It should be noted, however, that Goldney J, in the subsequent decision of *Regina v Khoo Kong Peh* (1889) 4 Ky 515 at 517, observed that Ford CJ had, since *Cashin*, told him that he had considered that he was wrong in so holding. However, this was only by way of response to counsel's argument that the marginal notes of Ordinances could be looked at to interpret the sections therein and, significantly, was not referred to by Goldney J himself, who simply agreed with Wood ACJ's very short judgment on the substantive point in that particular case. In any event, this off-the-cuff observation has since been superseded by a number of more modern local cases, as noted above (at [37]). Indeed, even the position in England has now changed, as will be seen in the following paragraph.

40 The position in England has very recently been *reversed*, and the position is therefore now the *same* as that adopted in *Singapore*. Initial doubts as to the previous position in England was, in fact, raised in the scholarly literature as to whether the principle that marginal notes were not to be looked at in construing a statute was correct. In F A R Bennion, *Statutory Interpretation* (Butterworths, 4th Ed, 2002), the learned author observes thus (at p 609):

> The so called 'irresponsible persons' referred to by Phillimore LJ … are the clerks who are empowered to make what are known as printing corrections to Bills. Far from being irresponsible, they are subject to the authority of Parliament. Objection may be taken by a Member to anything done by a parliamentary official in relation to a Bill; and it would be open to either House, if it thought fit, to order rectification of a printing correction which it considered unsuitable. However the marginal notes in an Act are not inserted by parliamentary clerks, but are contained either in the Bill as introduced or in new clauses added by amendment. …
>
> To suppose that the components of a Bill which are subject to printing corrections cannot be looked at in interpretation of the ensuing Act … goes against another principle of law, expressed in the maxim *omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium* – all things are presumed to be rightly and duly performed unless the contrary is proved. This is an important principle in many fields of law. There is no justification for excluding Acts of Parliament from its purview.

The position in England in relation to the relevance of marginal notes as an aid to statutory interpretation has now been confirmed by the House of Lords in its recent decision in *Regina v Montila* [2004] 1 WLR 3141. As already mentioned, the position is now the same as that in Singapore. The House *rejected* the views expressed in both *Re Woking* ([38] *supra*) and *The King v Hare* ([38] *supra*). It then proceeded to observe thus (at [33]–[34] and [36]):

> *These observations* [in *Re Woking* ([38] *supra*) and *The King v Hare* ([38] *supra*)] *were not wholly accurate at the time they were made, and they are out of keeping with the modern approach to the interpretation of statutes and statutory instruments. It is not true that headings and sidenotes are inserted by "irresponsible persons", in the sense indicated by Phillimore LJ. They are drafted by parliamentary counsel, who are answerable through the Cabinet Office to the Prime Minister. The clerks, who are subject to the authority of Parliament, are empowered to make what are known as printing corrections. These are corrections of a minor nature which do not alter the general meaning of the Bill.* But they may very occasionally, on the advice of the Bill's drafter, alter headings which because of amendments or for some other

reason have become inaccurate: *Bennion*, p 609. *Nor is it true that headings are inserted only after the Bill has become law. As has already been said, they are contained in the Bill when it is presented to Parliament. Each clause has a heading (previously a sidenote) which is there throughout the passage of the Bill through both Houses. When the Bill is passed, the entire Act is entered in the Parliamentary Roll with all its components, including those that are unamendable.* As *Bennion* states, at p 638, the format or layout is part of an Act.

The question then is whether headings and sidenotes, although unamendable, can be considered in construing a provision in an Act of Parliament. Account must, of course, be taken of the fact that these components were included in the Bill not for debate but for ease of reference. This indicates that less weight can be attached to them than to the parts of the Act that are open for consideration and debate in Parliament. But it is another matter to be required by a rule of law to disregard them altogether. One cannot ignore the fact that the headings and sidenotes are included on the face of the Bill throughout its passage through the legislature. They are there for guidance. They provide the context for an examination of those parts of the Bill that are open for debate. Subject, of course, to the fact that they are unamendable, they ought to be open to consideration as part of the enactment when it reaches the statute book.

...

The headings and sidenotes are as much part of the contextual scene as these materials [the Explanatory Notes], and there is no logical reason why they should be treated differently. That the law has moved in this direction should occasion no surprise. As Lord Steyn said [in *Regina (Westminster City Council) v National Asylum Support Service* [2002] 1 WLR 2956 at [5]], *the starting point is that language in all legal texts conveys meaning according to the circumstances in which it was used.*

[emphasis added]

41 While we note that it is now well established that marginal notes can be used as an aid to statutory interpretation, ultimately, the meaning to be given to any statutory provision must be gleaned from *the actual statutory language as well as the context.* For example, if despite the marginal note of s 8 itself which reads, "Pensions, etc., not of right", s 8(1) had gone on to state the direct opposite, for example, that an officer has *a* right to a pension, the courts would derive little or no help from the marginal note which states the direct opposite of what was said within the provision itself.

42 More importantly, however, as Prof Woon has pointed out, there is an unbroken line of authority across the Commonwealth which supports the interpretation that a public officer has *no* legal right to a pension pursuant to s 8(1) of the Act. Prof Woon helpfully traced the relevant case law not only in England but also in Sri Lanka and Malaysia that (with the exception of a sole dissenting judgment in a Sri Lankan decision) held that the grant of a pension was at most a legitimate expectation rather than an entrenched right or entitlement. In the circumstances, he argued that this court should be slow in departing from a principled as well as unbroken line of authority.

43 We agree with Prof Woon. The authorities are more than clear in this particular respect. In saying this, we should emphasise that precedents should not be followed blindly and/or dogmatically for their own sake. As we shall see, the relevant decisions are in fact both logical and fair. In this regard, the leading authority is that of the House of Lords in *Nixon v Attorney-General* [1931] AC 184 ("*Nixon*"). In *Nixon*, the court was faced with s 30 of the English Superannuation Act of 1834 (c 24)

which provided that:

> [N]othing in this Act contained shall extend or be construed to extend to give any Person an absolute Right to Compensation for past Services, or to any Superannuation or Retiring Allowance under this Act, or to deprive the Commissioners of His Majesty's Treasury, and the Heads or Principal Officers of the respective Departments, of their Power and Authority to dismiss any Person from the Public Service without Compensation.

44 Viscount Dunedin observed thus (at 191):

> [Section 30] of the Act of [1834] says that there is to be no absolute right. *My Lords, to get out of a provision that you are not to have an absolute right a positive provision that you are to have a right, is an argument which has only to be stated to be rejected*. [emphasis added]

45 Mr Ramayah sought valiantly to distinguish *Nixon* on the basis that there was no equivalent of s 8(2) of the Act in the English Superannuation Act of 1834. However, we do not, with respect, find such an argument persuasive in the least. We would agree with the respondent that the reasoning adopted by the court in *Nixon* is of particularly persuasive authority in the light of the similarities between the wording of s 30 of the English Superannuation Act of 1834 and that in s 4 of the Pensions Ordinance 1870 ([34] *supra*), the first legislation on pensions payable to public officers in Singapore, which provided to similar effect thus:

> Provided always that no Judge or Public Servant shall be held to have an absolute right to compensation for past services, or to any pension under this Ordinance, nor will these regulations affect the right of Government to dismiss any Judge or Public Servant without compensation.

This particular Ordinance was in fact re-enacted shortly thereafter as the Pensions Ordinance 1871 ([34] *supra*) (see also the Statement of Objects and Reasons to the Bill to this particular Ordinance at *Straits Settlements Government Gazette* (28 April 1871) at p 168). However, the relevant provision (*viz*, s 4) remained exactly the same.

46 Indeed, the very first ground which Mr Ramayah relied upon actually – and paradoxically – *supported the respondent*. It will be recalled that he had argued that, by reference to an "absolute right" under s 8(1) of the Act, Parliament had only intended to indicate that the right was a "contingent" one (see generally [13] above).

47 However, the fact that the right was itself a contingent one meant that it was *not*, *ex hypothesi*, an *entitlement* to begin with. In other words, the fact that there were a number of contingencies, the happening of one or more of which prior to retirement would prevent the officer concerned from obtaining a pension, supports Prof Woon's point (which has been clearly endorsed in the Malaysian context (at [64] below)) to the effect that there was, at best, a legitimate *expectation* that the officer concerned would be granted a pension.

48 Put another way, if Mr Ramayah was in fact correct in arguing that the officer concerned had *a legal right or entitlement to a pension*, it had to be one that had been vested initially *and* which would continue to remain vested as *an entitlement* in that particular officer – *come what may*.

49 The appellation "absolute" in s 8(1) of the Act serves to illustrate – and simultaneously underscore – this point. In this regard, s 8(1) in fact states the *exact opposite* of what Mr Ramayah had argued: It states that the officer concerned does *not* have such "an absolute right" to a pension. This is wholly understandable, not least because the officer concerned could engage, for example, in

inappropriate conduct.

50 Mr Ramayah sought, in effect, to detach the word "absolute" from the phrase "absolute right" in s 8(1). With respect, such an approach is both artificial as well as misconceived. The entire phrase "absolute right" is a composite whole and must be read and interpreted as such and in its proper context.

51 Indeed, it is hard to see how a merely contingent right is entitled to constitutional protection. If at all, the right has to be an "absolute right" within the meaning of s 8(1) of the Act. However, as we have already observed, s 8(1) clearly states that there is *no* "absolute right" to a pension under the Act. And, as we shall see, the case law interprets the phrase "absolute right" as meaning "legal right". This is perfectly understandable in the light of the fact that only legal rights are, *ex hypothesi*, enforceable under law. However, in order to be enforceable, such rights must not be qualified, *ie*, they must be *absolute* in nature. Indeed it is contradictory for the appellants to assert that a public officer has a right to a pension and to say, in the next breath, that this is a right which is contingent upon retiring in pensionable circumstances. Related to this must be the fact that for any interest or expectation to amount to a "right", the interest or expectation must be of such certainty that it is possible to say in the clearest of terms what the nature of the right claimed is and under what circumstances it arises. Hence, on a plain reading of s 8(1) of the Act alone, the appellants' case fails *in limine*.

52 As already mentioned, the case law in jurisdictions *outside* England apply – and, hence, underscore as well as confirm – this conclusion.

53 In this regard, there is, in fact, a series of *Sri Lankan* cases spanning almost half a century that confirm that there is no legal right to a pension. One of the earliest cases was decided as far back as 1948. This was the decision of *Gunawardane v Attorney-General* (1948) 49 NLR 359 ("*Gunawardane*"). However, the key decision (cited, in fact, by both parties to the present proceedings) is *Abeysinghe* ([14] *supra*).

54 In *Abeysinghe*, the relevant provision was to be found in the first section of the Minutes on Pensions, which read as follows:

> Public servants have no absolute right to any pension or allowance under these rules and the Crown retains the power to dismiss a public servant without compensation[.]

55 In that case itself, the plaintiff-respondent had been found guilty of one of the charges of bribery on which he was arraigned. He was dismissed from the Public Service. However, on representations made by him to the Public Service Commission, the Commission decided, as a merciful alternative, to vary the order of dismissal earlier made to one of compulsory retirement due to inefficiency. The Secretary to the Treasury, pursuant to ss 2 and 15 of the Minutes on Pensions, made an award of pension under which the plaintiff-respondent was to receive a pension calculated under the ordinary rules, but subject to: (a) a reduction of 20 per cent; and (b) the commencement of the payment of his periodical pension only from 1 February 1968. The plaintiff-respondent instituted a claim for a declaration that he was entitled to be paid his full periodical pension calculated according to the Minutes on Pensions for the period commencing 1 June 1957, which was the date on which his retirement became effective, instead of the period commencing 1 February 1968, which was the day following that on which the Director of Health Services had communicated the decision of the Public Service Commission to the plaintiff-respondent. The court held that the District Court (the court below) was wrong in granting the plaintiff-respondent the declaration which he had sought and allowed the appeal of the Attorney-General. It should be noted, in this regard, that although

Sirimane J disagreed (as we shall see) with the approach adopted by the majority and was of the view that the plaintiff-respondent had the right to maintain an action for a declaration, the learned judge nevertheless arrived at the same substantive result as his brother judges, albeit based on the merits of the case itself. It will be immediately seen that the relevant provision (reproduced in the preceding paragraph) was, in *substance*, the *same* as s 8(1) of the Act (reproduced above at [33]). Significantly, Tennekoon CJ, who delivered the more detailed of the two judgments of the majority (the other judge being Tittawella J), observed (at 364) that

> Section 1 of the Minutes on Pensions [reproduced above at [54]] *follows very closely the language of section 30 of the Superannuation Act* [in *Nixon* ([43] *supra*)]. [emphasis added]

56 It comes as no surprise, therefore, that Tennekoon CJ relied both on the English Court of Appeal's decision in *Nixon* (see *Nixon v Attorney-General* [1930] 1 Ch 566) as well as the House of Lords decision in response to the argument that a public servant had a contingent right to a pension. In particular, in the Court of Appeal decision in *Nixon*, Lord Hanworth MR had observed (at 592) as follows:

> An attempt was made to suggest that the use of the word "absolute" left it possible that a conditional right remained to the civil servants, but I cannot accept that view. In my judgment the word is used so that a right in any form may be negatived. The section destroys the possibility of *a claim of legal right*. [emphasis added]

57 Tennekoon CJ also referred to – as well as relied upon – Viscount Dunedin's observations at the House of Lords stage in *Nixon* (cited at [44] above).

58 More importantly, the learned Chief Justice arrived at the following conclusion ([14] *supra* at 364):

> *The expression "no absolute right" to my mind means "no legal right".* It is a signal hoisted by the draftsman to indicate both to the beneficiaries under the Minutes on Pensions and to the Courts that the Minutes are not to be taken as creating rights enforceable in the Courts. The "no legal right" concept contained in section 1 of the Minutes is then *reinforced* by the text of rules 2 and 15 which contain the expressions "may be awarded" and "may in his discretion grant". [emphasis added]

59 It is important to observe, at this juncture, that the focus by Tennekoon CJ was on the legal interpretation of the phrase "absolute right" in section 1 of the Minutes on Pensions, with the text of rr 12 and 15 merely (in his own words) "reinforcing" the aforementioned interpretation. This is because Mr Ramayah sought, as we have seen, to argue (at [14] above) that the expressions "may be awarded" and "may in his discretion grant" in rr 12 and 15 of the Sri Lankan regulations served to distinguish the situation in *Abeysinghe* from that in the present appeal. As just mentioned, this is a relatively minor point. In any event, it is not (as we have pointed out at [14] above) a persuasive one.

60 Tennekoon CJ also responded thus to an argument that was very similar to that made by Mr Ramayah (at [13] above) on behalf of the appellants in the present appeal (at 365):

> One of the submissions made on behalf of the plaintiff-respondent was that the opening sentence of the Minutes on Pensions which provides that public servants have no absolute right to any pension, says by implication that they have a right, but not an absolute right. *Can it be said that they have a conditional or a contingent right? There is no basis for suggesting that there is a*

conditional or a contingent right for the rules do not provide for a condition or contingency in which the right becomes a full fledged or perfect right, for that is the ordinary significance of qualifying the word 'right' by the word 'conditional' or by the word 'contingent.'

To my mind the words 'absolute right' are used in contradistinction to what are in legal theory known as an "imperfect right". An imperfect right is one which is unenforceable in the ordinary Courts of Law.

[emphasis added]

61 Very significantly, in our view, the reasoning embodied in the learned Chief Justice's observations in the preceding paragraph is, in substance and effect, very similar to that which we have set out above, which was based on a practical as well as conceptual reading of the plain language of s 8(1) of the Act (see generally above at [46]–[51]).

62 Returning to *Gunawardane* ([53] *supra*), Gratiaen J observed, in that decision, as follows (at 359–360):

The plaintiff's claim was successfully resisted by the Attorney-General in the lower Court on the ground that Gunawardene had no legally enforceable right to recover any pension from the Crown. In other words, it was contended, a Court of law has no jurisdiction in any matter relating to the payment of pensions to retired Government servants, such matters ***depending entirely upon the grace and bounty of the Crown***. … Rule 1 of [the Minutes of Pensions] expressly provides that "public servants have *no absolute right to any pension or allowance* under these rules." Those words which I have quoted follow the language of section 30 of the Superannuation Act (4 & 5 William 4, Chapter 24) of England, which have been construed in the English Courts as "destroying the possibility of a claim of legal right" (*Cooper v The Queen* [(1880) 14 Ch D 311]). [emphasis added in bold italics]

63 The principle that there is no legal right to a pension was also adopted by Suffian J (as he then was) in the Malaysian High Court decision of *Haji Wan Othman v Government of the Federation of Malaya* [1965] 2 MLJ 31 in the face of similar pension legislation which states to the effect that public officers have no "absolute right" to a pension. This decision was affirmed by the Malaysian Federal Court in *Haji Wan Othman v Government of the Federation of Malaya* [1966] 2 MLJ 42, albeit more on a point of construction of the specific regulation concerned.

64 More recently, in the Malaysian Court of Appeal decision of *Asa'ari bin Muda v Kerajaan Malaysia* [2006] 5 MLJ 322 ("*Asa'ari*"), the court opined that a civil servant merely had a *legitimate expectation* of receiving a pension on his or her retirement if he or she did not misconduct himself or herself. In that case, the facts of which are similar to the present, the plaintiffs would have been entitled to a pension if not for the fact that they had opted to be employed under the Inland Revenue Board ("IRB") scheme. Under the IRB scheme, there were features which made it substantially more advantageous to employees than the pension scheme. First, under the IRB scheme, IRB had to make a 17½% contribution to the Employees Provident Fund Board. Second, the plaintiffs received salary warrants under the IRB scheme, which they would not have received had they opted to remain under the pension scheme. Gopal Sri Ram JCA (with whom Mohd Ghazali JCA agreed) dismissed the plaintiffs' claim, holding, *inter alia*, that, under the equivalent of s 8(1) of the Act, the plaintiffs had no "absolute right" to a pension (the remaining judge, Abdul Aziz Mohamad JCA, whilst also concurring in the result, did not make any explicit pronouncement on this particular point).

65 Back home, in the Singapore High Court decision of *Low Yoke Ying v Sim Kok Lee*

[1990] SLR 1258, Yong Pung How CJ had to consider a claim brought by the deceased's estate against the tortfeasor for the loss of the pension, gratuity and CPF which the deceased would have been entitled to by serving as a lieutenant in the Singapore Armed Forces. Similar to the formula adopted in s 8(1) of the Act, reg 4(1) of the Singapore Armed Forces (Pensions) Regulations 1978 (GN No S 17/1978) provided that "*[n]o member or other person shall have an absolute right to compensation or to any pension, gratuity or allowance under these Regulations* nor shall anything in these Regulations limit the right of the Armed Forces Council to dismiss or to terminate the services of a member without compensation" [emphasis added] (see now reg 5(1) of the Singapore Armed Forces (Pensions) Regulations (Cap 295, Rg 9, 2001 Rev Ed)). In dismissing the estate's claim, the learned Chief Justice was of the opinion that no right or entitlement to a pension or gratuity had vested in the deceased. Yong CJ was of the view (at 1270, [30]) that "[p]ensions are in fact the creations of statute, and in considering a claim for loss of pension, regard must first be had to the particular statute governing the award or grant of the pension". The learned Chief Justice further opined thus (at 1271, [32]):

> On a[n] officer qualifying for a pension by his retirement after the successful completion of his service, it is entirely in the discretion of the Armed Forces Council to grant to him a pension, or gratuity or other allowance. The Council's powers are very extensive, and the Council may for good cause cancel, withhold or reduce a grant, or subsequently restore it in whole or in part. This being so, there would have been in my opinion *no right or entitlement to a pension or gratuity vested in the deceased* which would have enabled the personal representatives to base a claim against a tort-feasor either on behalf of the estate or for the benefit of the dependants. [emphasis added]

We are of the view that it can equally be said in the context of the present case that the appellants do not have a "right or entitlement" to a pension.

66 Indeed, we see no reason why *Nixon* ([43] *supra*) should not apply to the present proceedings – as it has in the previous Commonwealth case law on this issue. As we have already elaborated upon above, the language of s 8(1) itself is clear. We also note that the Act necessarily had its roots in the *English context*. It is therefore not surprising that the historical antecedents of the Act had English statutory roots. Indeed, given the fact that Singapore was in fact a former British colony, it is inconceivable that the colonial government would have intended that colonial officials in colonial Singapore should be better off than government officials in Britain (who were governed by the principles expressed by the House of Lords in *Nixon*). Indeed, looking at the legislative council proceedings surrounding the promulgation of the very first such Ordinance in the Straits Settlements, there is no evidence whatsoever that anything other than the English position was intended (see generally *Proceedings of the Legislative Council of the Straits Settlements, Shorthand Minutes, 1870* (22 August 1870) at pp 81–82, 93–98 and 101–104, as well as Appendix 20 of these same *Proceedings*, which is entitled "Report of the Select Committee of the Legislative Council to enquire into the subject of Pensions to be granted to Public Officers in the Straits Settlements"). All this buttresses in no small measure the point noted at the outset of the present paragraph to the effect that *Nixon* is the leading authority in the Commonwealth in the manner noted above. It can persuasively be said that the employment of the term "absolute right" in the context of pensions legislation in the Commonwealth has acquired the status of a "term of art".

67 As mentioned at [56]–[60] above, the *majority* decision in *Abeysinghe* ([14] *supra*) not only clearly endorses the proposition in *Nixon* but also supports, on a more general level, the view that an "absolute right" means a "legal right". However, Mr Ramayah relied heavily on the *dissenting* judgment of Sirimane J in the same case. We did not discuss Sirimane J's judgment earlier because this was relied upon very heavily by Mr Ramayah, and hence merited independent and, more importantly,

detailed treatment in this judgment. That Mr Ramayah staked so much of the appellants' case on this particular judgment is not surprising in the least. Quite apart from the fact that this was a dissenting judgment, what is even more significant, in our view, is the fact that this particular judgment appears to be the *only* authority militating against the general proposition to the effect that there is no legal right to a pension. However, that being the case, we find it quite remarkable that Mr Ramayah cites it as representing the legal position that ought to be adopted. Nevertheless, we must, in fairness, examine this sole dissenting authority to ascertain whether there are any qualitative reasons that merit its adoption, despite it being a singularly lone voice in the vast ocean of contrary authorities.

68 Mr Ramayah argued that it was wrong to read the words "no officer shall have an absolute right" to mean that the officer has "no right". This was precisely the reasoning adopted by the dissenting judge, Sirimane J, in *Abeysinghe*. The learned judge there had observed (at 379) in relation to the Minutes on Pensions, which provides to similar effect as s 8(1) of our Act that he was:

> … unable to interpret the words "no absolute right" as being the same as "absolutely no right", which in effect is the decision in the English cases … [T]his phrase indicates that public servants are not entitled to pensions under all or any circumstance, but only, and subject to … limitations and conditions … For instance the words "and the Crown retains the power to dismiss a public servant without compensation" … is one instance where a public servant will have no right to a pension, as otherwise even a Public Servant who is dismissed can claim that he has a right to a pension.

69 With respect, we are unable to agree with Sirimane J's reasoning. Consistent with our reasons set out above (see generally at [46]–[51]), the fact that Sirimane J was himself of the view that the right was one subjected to "limitations and conditions" must mean that this right was *not*, *ex hypothesi*, an *entitlement* to begin with. As we have elaborated upon in detail above, a right cannot be said to exist if it is contingent upon the occurrence of other as yet unknown events.

70 In holding that it could be said that a public officer had a right to a pension, Sirimane J was also of the view that in Sri Lanka, a public servant's pension was as much a part of his contract of service as his salary and a public servant was therefore entitled to a pension. Sirimane J observed as follows (at 378):

> The applicants relied very much on the fact that the post was pensionable and preferred to join the Government Service even on lower scales of pay than the private sector in order *to "earn" a pension*. Even their letters of appointment stated that the post to which they were appointed was permanent and pensionable. It is on the faith of these statements that a public servant in Ceylon serves the Government and gives of his best *to "earn" not only his salary but also his pension* … [emphasis added]

The learned judge contrasted this with the common law situation where the public servant merely held office at the pleasure of the Crown.

71 With respect, there is, in our view, no necessary conflict between the proposition that a public servant or public officer has a contract of service with the Government and the proposition that a public servant or public officer simultaneously holds his or her office at the pleasure of (in *Abeysinghe*) the Crown. In any event, the last-mentioned proposition is at least the default position in *Singapore* today, as embodied in Art 104 of the Constitution, which reads as follows:

> Except as expressly provided by this Constitution, every person who is a member of the public service shall hold office *during the pleasure of the President.* [emphasis added]

72 The principle embodied in Art 104 of the Constitution is consistent with that which exists at common law and has been confirmed in the local case law (the corresponding article being found in Art 132(2A) of the Malaysian Constitution): see, for example, the Federated Malay States decision of *S K Pillai v State of Kedah* (1927) 6 FMSLR 160 ("*Pillai*"); the Singapore High Court decision of *Amalgamated Union of Public Employees v Permanent Secretary (Health)* [1965] 2 MLJ 209 ("*Amalgamated Union of Public Employees*"); and the Malaysian Federal Court decision of *Government of Malaysia v Mahan Singh* [1975] 2 MLJ 155.

73 However, there are apparent qualifications to the principle embodied in Art 104 of the Constitution. These are to be found in Arts 110(3) and 110(4), which read as follows:

> (3) No public officer shall be dismissed or reduced in rank under this Article without being given a reasonable opportunity of being heard.
>
> (4) … no member of any of the services mentioned in Article 102(1)(*b*) to (*d*) shall be dismissed or reduced in rank by an authority subordinate to that which, at the time of the dismissal or reduction, has power to appoint a member of that service of equal rank.

74 The precise legal effect of the qualifications referred to in the preceding paragraph (in particular, in Art 110(3)) is not immediately clear. In this regard, however, the decision in *Amalgamated Union of Public Employees* is instructive. Although his observations were, strictly speaking, *obiter*, Winslow J did refer to the equivalent of Art 104 of the Constitution, after which the learned judge significantly proceeded to observe further as follows (at 212):

> *Furthermore* they [public servants] *do not have any absolute right to pension and* provision as to this is specifically made in the Pensions Ordinance, 1956 [the predecessor of the Act].

The learned judge, however, then observed thus (see *ibid*):

> It is no doubt true that article 135 of the Federal Constitution confers certain rights on civil servants [see now Art 110(3) of the Constitution] *but* these relate to matters such as the manner in which or by whom they may be dismissed. *They do not confer any right to office or to pension or any right not to be dismissed*. [emphasis added]

75 Whilst Winslow J's observations set out in the preceding paragraph do not conclusively resolve the issue as to what precisely is the nature of the right contained within Art 110(3) of the Constitution (this issue was, for example, referred to, *inter alia*, in the Malaysian Privy Council decision of *Government of Malaysia v Lionel* [1974] 1 MLJ 3), we agree entirely with his proposition to the effect that, whichever view is adopted with respect to the issue just mentioned, there can be no doubt that a public officer is *not* conferred any legal right to a pension. We are fortified in our view for the detailed reasons already set out above (especially at [46]–[51]). Further, it is significant that Winslow J also referred to the equivalent of s 8(1) of the Act in arriving at his decision on this particular point (*cf* also *Pillai* ([72] *supra* at 171)).

76 In point of fact, whether or not the principle of a public officer holding office during the pleasure of the President pursuant to Art 104 of the Constitution is qualified or not (depending, in the main, on the interpretation taken with respect to Art 110(3) of the same) is not, strictly speaking, relevant in so far as the present appeal is concerned. Even if, as Sirimane J assumed in *Abeysinghe*, the common law principle of a public officer holding office at the pleasure of the Crown (or, more correctly in the context of the present appeal, the President) is no longer applicable, this does not, *ipso facto*, confer upon the public officer concerned a legal right to a pension. We should, however,

hasten to add that such an assumption, even taking into account Art 110(3) of the Constitution, is not, strictly speaking, correct. Legal effect *must* be given to Art 104 of the Constitution, with the only issue being to what extent it ought to be qualified by Art 110(3). In any event, as we have just noted, this last-mentioned issue is not really relevant in the context of the present appeal.

77 A similar approach would, in our view, apply to Sirimane J's other (and related) assumption to the effect that a public servant or public officer is entitled to avail himself or herself of the terms of his or her contract. The crucial issue still remains to be answered: What does the phrase "absolute right" in s 8(1) of the Act mean? If, as we have held, it means that the public officer concerned has *no legal right* to a pension, then that interpretation (and its corresponding legal effect) *overrides* whatever other interpretation that one can glean from the terms of that public officer's contract.

78 What is of further assistance is the fact that the second part of s 8(1) of the Act further buttresses our interpretation of the phrase "absolute right" in the first part of that particular provision inasmuch as the former, by confirming that nothing in the Act is to be taken as affecting the right of the Government to dismiss a public officer without compensation, confirms *the overall tenor* of s 8(1) of the Act itself. It is clear, in our view, that the broad spirit and intent underlying s 8(1) are concerned with what *cannot* be claimed by a public officer. This is, of course, the *precise antithesis* of what is being argued for by the appellants in the present proceedings. It is also significant, in our view, that the general or overall tenor referred to above is also to be found in the only other sub-section in s 8 of the Act, *viz*, s 8(2), which reads as follows:

> Subject to Article 113 of the Constitution, where it is established to the satisfaction of a Pension Authority that an officer over which it has jurisdiction has been guilty of negligence, irregularity or misconduct, it shall be lawful for the Pension Authority to withhold the pension, gratuity or other allowance for which the officer would have become eligible but for this section.

79 In summary, therefore, on a plain reading of s 8(1) of the Act – a reading supported, in fact, by the relevant case law – no officer has a legal right as such to a pension under the Act. This reading is, as just mentioned, further buttressed by the overall tenor of the provision itself. In the circumstances, therefore, the present appeal must fail *in limine*.

80 However, in deference to the vigorous arguments Mr Ramayah made on behalf of his clients on the premise that an officer indeed has such a legal right (which, however, we have just held is untenable), we will now proceed to evaluate them. Nevertheless, even allowing the appellants this concession of arguing from a legal premise that is fatally flawed, it will be seen that those arguments are also wholly without merit. This fundamental difficulty notwithstanding, we will nevertheless proceed to consider the appellants' further arguments to the effect that they not only had a legal right to a pension (henceforth termed "the flawed premise") but that this legal right was also protected by the Constitution.

81 It was clearly inadequate for the appellants to claim a legal right to a pension under the Act in the abstract. In this regard, s 8(1) of the Act could not constitute a "legal peg" on which the appellants could rest such a claim. Indeed, as we have seen, s 8(1) constituted, instead, a *threshold obstacle* which the appellants had to clear, as it were, before they could proceed further in their arguments in the present appeal. As we have already noted, Mr Ramayah recognised this from the outset of these proceedings. He also recognised that an argument in favour of a legal right could not be made in the abstract. To this end, he relied, as noted above, upon s 9(*d*) of the Act as embodying a legal right on the part of the appellants to a pension.

Whether it can nevertheless be argued that the appellants have a right to a pension by virtue of

s 9(d) of the Pensions Act

82 At this juncture, we need to note an ambiguity in the arguments tendered by Mr Ramayah. One approach has just been stated: It is that Mr Ramayah was arguing that s 9(*d*) of the Act embodied the appellants' legal right to a pension.

83 However, on other occasions, Mr Ramayah appeared to suggest that the PS (Finance) had, in Mr Ramayah's own words, "disapplied" the Act by imposing a condition that the appellants had to agree that the 1973 Option, when exercised, was irrevocable. We find, with respect, that this particular approach tends to confuse rather than enlighten. More specifically, whether or not the condition of irrevocability just mentioned is legal and/or constitutional depends on whether or not the appellants had an inalienable legal right to a pension under s 9(*d*) of the Act in the first instance. *If* they did *not*, then they would be free, by *contract*, to enter into the 1973 Option; more importantly, they would be *legally entitled* to enter into such a contract. *If*, however, the appellants *had* an inalienable legal right to a pension under s 9(*d*), then it would obviously be *wrong in law* for them to have entered into the 1973 Option in the first instance. Or, put another way, even if they had entered into a purported contract, it would have had no legal effect or bite.

84 Looked at in this light, the argument from irrevocability is, with respect, a "legal red herring". The key issue is the one stated in the preceding paragraph: Does s 9(*d*) of the Act accord the appellants an inalienable legal right to a pension to begin with? It is therefore imperative to inquire as to *the legislative purpose underlying s 9(*d*) of the Act*. It is, at this juncture, worthy to note that even if the argument from irrevocability were maintained, it would *still* be necessary to ascertain this particular legislative purpose.

85 Turning, then, to s 9(*d*) of the Act, it would first be appropriate to set it out. It reads as follows:

> **9.** No pension, gratuity or other allowance shall be granted under this Act to any officer —
>
> …
>
> (*d*) in respect of any service, including service deemed under any written law for the time being in force to be service with the Government for the purposes of this Act, during which the officer was —
>
> (i) a member of any fund mentioned in the Second Schedule, except upon the condition that there shall be first paid to the Government the total amount paid by the Government to that fund excluding the amount paid on account of the officer if he is on the pensionable establishment with respect to the service or an equivalent amount if he is not on the pensionable establishment with respect to such service, together with the interest, if any, thereon; or
>
> (ii) eligible for any benefits on retirement under the Singapore City Council Superannuation Fund for Subordinate Employees Rules 1954 except upon the condition that he shall first relinquish all rights to the benefits under those Rules.

86 The development of s 9(*d*) of the Act from its inception in 1956 to the form in which it appears in our present legislation has been detailed by the Judge in his judgment and we do not propose to cover the same ground which he has traversed. We would agree with the Judge, however, that the rationale of s 9(*d*) was to ensure that the Government did not pay twice for retirement

benefits. In this regard, the Judge said as follows (at [16]–[18] of the GD):

> 16 The roots of s 9(*d*) of the Act may be traced to the legislation of the Federation of Malaysia ("the Federation"). A similar provision was included in the Federation's Pensions (Amendment) Regulations, 1952 and this was incorporated into the principal legislation of the Federation by means of the Pensions (Amendment) Ordinance, 1955. The reasons for that amendment were stated in the explanatory note on its objects as follows:
>
> > In accordance with the *principle that the Government shall not be liable both for superannuation benefits and for contributions to the Employees' Provident Fund*, it is proposed that no pension, gratuity or other allowance shall be granted in respect of any period of service during which the officer was liable to contribute to the Fund except upon condition that a sum equivalent to the amount of the Government's contributions, plus the interest thereon, is refunded to the Government out of the money standing to the officer's credit in the Fund. [emphasis added by the Judge]
>
> 17 ***The amendment in question was thus intended to ensure that the Government of the Federation did not pay twice for retirement benefits and that it did not create any right to a pension for a public officer.***
>
> 18 In Singapore, a similar provision was enacted in 1956 in the Pensions Ordinance (Ord 22 of 1956) ("the Ordinance"). Section 6(*d*) of the Ordinance provided that no pension, gratuity or other allowance shall be granted to any officer:
>
> > … in respect of any service during which the officer was liable to contribute to the Central Provident Fund … except upon condition that there shall be first paid to the Government a sum equal to the total amount of the contributions paid by the Government to the said Fund on account of the officer in respect of such service, together with the interest thereon.
>
> [emphasis added in bold italics]

87 Unfortunately, the Legislative Assembly Debates do not explain, in precise terms, why s 6(*d*) was introduced into our pensions legislation in 1956. According to the Legislative Assembly Debates, the main objectives of the Pensions Ordinance 1956 centred on: (a) consolidation, (b) updating the law, and (c) providing one uniform pension scheme for the public service. Sir W A C Goode, the Chief Secretary, observed thus during the Second Reading of the amendment Bill (*Singapore Legislative Assembly Debates* (4 April 1956) vol 1 at col 1774):

> The first and main object of this Bill … is to consolidate and bring up to date our pensions law which is now 27 years old and has been amended and needs consolidating and revising.
>
> The second main purpose of this Bill is to provide one uniform scheme of pensions and gratuities for all members of the public service of Singapore and that will do away with the invidious distinction which previously existed between those members of the public service who were on what was known as the Singapore Establishment and whose pensions and gratuities were governed by the Singapore Pensions Ordinance, and the other set of officers in the public service here who used to be on what was known as the Malayan Establishment and were on a separate series of pension regulations.

88 In ascertaining the legislative purpose of s 9(*d*) of the Act, it is instructive to consider the other sub-sections of s 9. Such an approach will assist by providing the court with the *context* in

which s 9(*d*) should be construed. In this regard, s 9 was first enacted as s 6 of the Pensions Ordinance 1928 ([34] *supra*). The latter section provided as follows:

> Service not qualifying for pension, etc.
>
> No pension, gratuity or other allowance shall be granted under this Ordinance to any officer —
>
> (*a*) in respect of any service in any of the following capacities, namely, Private Secretary or Aide-de-Camp to the Governor, Private Secretary or Clerk to a Judge, apprentice in a public department, normal student or pupil teacher, or
>
> (*b*) if he entered the service of the Colony on or before the 1st day of July, 1925, in respect of any service while under the age of sixteen years, or
>
> (*c*) if he entered the service of the Colony after the 1st day of July, 1925, in respect of any service, other than service as a police officer, while under the age of twenty years.

89 Section 6 therefore listed various classes of colonial staff who were prohibited from receiving pensions. The Explanatory Statement attached to the Bill introducing the Pensions Ordinance 1928 stated the objects and reasons for the enactment as follows:

> The object of this Bill is to consolidate and amend the law relating to the granting of pensions, gratuities and other allowances to persons who have held office in the public service of the Colony.
>
> The principal amendments are as follows:—
>
> …
>
> (*b*) It is declared that service in certain capacities, or while the officer is under a certain age, shall not qualify for pension. Provisions of this nature have hitherto been included in the regulations, but not in the Ordinance.

90 As the respondent pointed out in his written submissions, far from conferring a right on public officers to receive a pension, the intention of s 6 was to *debar* certain categories of persons from receiving pensions. It was clear then that when Parliament enacted s 6(*d*) in the Pensions Ordinance 1956 (the present s 9(*d*) of the Act), Parliament had simply intended to debar public officers who contribute to the CPF from receiving pensions.

91 The amendments made thereafter to s 6(*d*) of the Pensions Ordinance 1928 have been examined in detail by the court below and we share the Judge's view, after an examination of the history and legislative purpose of s 9(*d*) *and* s 9 itself, that s 9(*d*) of the Act has nothing to do with a public officer's right to return to the pension scheme by paying back the amounts paid by the Government into their CPF accounts. In our view, s 9(*d*) simply delineates a specific category of public officers who are barred (without satisfying the necessary conditions) from qualifying for a pension. It does not confer a legal right, let alone an inalienable legal right to a pension.

The Constitution

92 Even if it could be argued that s 9(*d*) of the Act confers on the appellants a legal right to a pension (which we have held is *not* the case), the appellants would then have to bring the legal right which they assert they have within the ambit of one or more of the articles of the Constitution in

order for that particular right to be conferred constitutional protection. Mr Ramayah argued that pension rights are entrenched in Arts 112 (the heading of which reads "[p]rotection of *pension rights*" [emphasis added]), 113 and 115 (the heading which reads "*Pension rights* on transfer" [emphasis added]) of the Constitution, the supreme law of the land, and that the Act must be read in the light of the constitutional protection conferred on the legal right to a pension by public officers.

93 It is therefore necessary to trace the genesis and rationale of the articles relied upon by the appellants. Singapore, which had been part of the Straits Settlements, was first vested with a constitution (albeit a colonial one) on 1 March 1948 when it became a separate Crown Colony after the end of the Second World War. Subsequent changes to the constitution between 1948 and 1955 centred on introducing a democratic elections machinery in order to allow Singapore citizens to elect members of the Legislative Assembly.

94 Singapore took the first steps towards self-government when a Constitutional Mission met officials of the Colonial Office in London between April and May 1956. A second delegation succeeded in its demand for Singapore's self-governance a year later and the finer details of Singapore's new constitution were finally sorted out by a third all-party mission. On 1 August 1958, the British Parliament passed the State of Singapore Act 1958 (c 59) (UK) which converted the colony into a self-governing state. On 3 June 1959, the Singapore (Constitution) Order in Council 1958 (SI 1958 No 1956) (UK) came into force (this Order in fact made provision for a new constitution for Singapore). This was a key development, because Arts 83 and 85 of the Singapore (Constitution) Order in Council 1958 constituted, in fact, the genesis of what today are, respectively, Arts 112 and 115 of the Constitution.

95 Article 112 of the Constitution reads as follows:

> **Protection of pension rights**
>
> **112.**—(1) The *law applicable to* any pension, gratuity or other like allowance (referred to in this Article as an award) *granted to* any public officer or to his widow, children, dependants or personal representatives *shall be* that in force on the relevant day or any later law not less favourable to the person concerned.
>
> (2) For the purposes of this Article, the relevant day is —
>
> (*a*) in relation to an award made before 16th September 1963, the date on which the award was made;
>
> (*b*) in relation to an award made after 16th September 1963, to or in respect of any person who was a public officer before that date, the date immediately before that date; and
>
> (*c*) in relation to an award made to or in respect of any person who first became a public officer on or after 16th September 1963, the date on which he first became a public officer.
>
> (3) For the purposes of this Article, where the law applicable to an award depends on the option of the person to whom it is made, the law for which he opts shall be taken to be more favourable to him than any other law for which he might have opted.
>
> [emphasis added]

96 The relevant part of Art 115 of the Constitution reads as follows:

> **Pension rights on transfer**
>
> **115.**—(1) Notwithstanding any provision of this Constitution relating to the circumstances in which a public officer may vacate his office, any public officer may, with the consent of the Government (which consent shall not be unreasonably withheld), relinquish his office for the purpose of transfer to some other public office or to an office in any other public service, and if he so relinquishes his office, his *claim to any pension, gratuity or other like allowance* shall not thereby be prejudiced.
>
> [emphasis added]

97 The headings to Arts 112 and 115 of the Constitution (in particular, the reference to "pension rights") might, at first blush, appear to support the appellants' case (an argument made by Mr Ramayah (above at [92]); and see generally the discussion with regard to the role of marginal notes at [36]–[41] above). It is, however, important to reiterate that marginal notes are merely aids or guides to interpretation (see also [41] above). In particular, their meaning must be gleaned from *the actual statutory language as well as the context.* It is therefore imperative to ascertain *the precise content as well as the context* of the "pension rights" that are the focus of both Arts 112 and 115 of the Constitution. In this regard, the rationale underlying the inclusion of Arts 112 and 115 in our Constitution can be gleaned from para 43 of the Report of the Singapore Constitutional Reference held in London in March and April 1957 (Legislative Assembly, Singapore, Sessional Paper No Misc 2 of 1957) ("the Report"). That particular paragraph states as follows:

> The safeguards promised to members of Her Majesty's Overseas Civil Service and other overseas pensionable officers, as set out in the White Paper on the Reorganisation of the Colonial Service (Colonial Paper No. 306), should be secured. It should in particular be provided that:—
>
> (i) The officers' existing rights to retire with compensation and in respect of tenure of office, promotion and discipline should be safeguarded by incorporating in the constitutional instruments the provisions at present contained in the Ordinances establishing the Compensation Scheme and the Public Service Commission.
>
> (ii) The other terms of service of the officers concerned should not be altered to make them less favourable than those on which the officers were already serving, in accordance with paragraph 11(*d*) of Sessional Paper No. Command 65 of 1956 for the Legislative Assembly of Singapore (containing the Singapore Government's statement of policy on Malayanisation).
>
> (iii) *Existing laws and regulations relating to pensions and other like benefits should not be altered to the detriment of serving or retired officers or their dependents*.
>
> (iv) The officers should continue to be regarded by Her Majesty's Government in the United Kingdom as members of Her Majesty's Overseas Civil Service (or Her Majesty's Overseas Judiciary) and as such to be *eligible for consideration for transfer* (including promotion) to any posts which the Secretary of State might be requested to fill in other territories, and the Singapore Government should not unreasonably withhold consent to their accepting such transfer and *should preserve their existing pension rights on transfer*.
>
> [emphasis added]

98 It is therefore clear that Arts 112 and 115(1) were enacted to ensure that the terms of service of existing civil servants at the time Singapore attained self-governance would not be prejudiced. The appellants argued, however, that Art 112 contemplates that the Act confers pension rights; they argued, in particular, that it would be odd to say that Art 112 was enacted to only preserve the applicable law if and when an award was made but that, until then, a public officer had no right to a pension even if he retired in pensionable circumstances.

99 In our view, however, Art 112(1) simply protects a serving public officer against future legislation that adversely affects the legitimate expectation for a pension that may be awarded to him or her. This was the express intention of the Legislative Assembly as stated in para 43(iii) of the Report (reproduced above at [97]). As stated above, until a public officer is granted a pension, a public officer merely has a *legitimate expectation* to a pension. Such an interpretation would then be consistent with Art 112(1) which applies *only when* a public officer has been *granted* a pension such that the law applicable to a pension granted to a public officer shall be that in force on the relevant day or any later law not less favourable to the person concerned.

100 Accordingly, Art 112 of the Constitution does not provide any basis upon which the appellants can argue that they have a right to a pension. It is clear that the appellants' reliance on Art 112 to show that they have a right to a pension, simply because the heading of Art 112 is "Protection of pension rights", is misplaced.

101 The appellants also seek to rely on Art 115(1) on the basis that it speaks of the public officer's "claim" to any pension, gratuity or other like allowance and "claim" is defined as "right" in the *Concise Oxford Dictionary of Current English* ([18] *supra*). With respect, the appellants are clutching at straws in arguing that the use of words such as "claim" to a pension supports a finding that they have a right to a pension. A reading of para 43(iv) of the Report (reproduced above at [97]) demonstrates beyond peradventure that Art 115 was intended as a transitional arrangement for civil servants in service at the time Singapore attained self-governance. As the respondent rightly contended, it is a historical relic and is wholly irrelevant to whether the appellants can be said to have a right to a pension.

102 In any event, it is unclear how Art 115(1) would be able to assist the appellants in their claim for a right to a pension. Art 115(1) states that a public officer's claim to a pension, gratuity or other like allowance shall not be prejudiced if he "relinquishes his office for the purpose of transfer to some other public office or to an office in any other public service". The appellants have not and do not claim to have relinquished their office for some other public office. It also cannot possibly be argued that opting for the CPF scheme is a "relinquishment of his office for the purpose of transfer to some other public office".

103 The appellants also argued that Art 113 of the Constitution supports the view that there are pension rights which do not depend on discretion because it confines itself to cases where the award is dependent on the *discretion* of the authority or person vested with the power to award a pension under any law. Article 113 of the Constitution reads as follows:

> **Power of Public Service Commission and Legal Service Commission in relation to pensions, etc.**
>
> **113.**—(1) Where under any written law any person or authority has a discretion —
>
> (*a*) to decide whether or not any award shall be made; or

(*b*) to withhold, reduce in amount or suspend any such award that has been made,

that award shall be made and may not be withheld, reduced in amount or suspended unless the Public Service Commission or the Legal Service Commission, as the case may be, concurs in the refusal to grant the award or, as the case may be, in the decision to withhold, reduce in amount or suspend it.

(2) Where the amount of any award that may be made to any person is not fixed by law, the amount of the award to be made to him shall be the greatest amount for which he is eligible unless the Public Service Commission or the Legal Service Commission, as the case may be, concurs in the making of an award of a smaller amount.

(3) In this Article, "award" has the same meaning as in Article 112.

104 If Art 113 is looked at in isolation, there may, at first blush, be some merit to the appellants' argument. Nonetheless, as the respondent has correctly pointed out, the appellants have not pointed to any instance where a pension or like benefit is granted as of right to a public officer. Indeed, the appellants are unable to do so in the face of s 8(1) of the Act which states very clearly that no public officer has an absolute right to a pension.

The effect of the 1973 Option entered into by the appellants

105 Given our finding that the appellants had no legal right to a pension under the Act and that, even if they did, they could not point to any provision under the Act which in fact secured such a right and that, in any event, even if such a provision existed, there was no article in the Constitution that would afford the constitutional protection claimed by the appellants, it is clear that there was no legal obstacle whatsoever to the appellants entering into the 1973 Option by way of a contract where such a choice was (in the appellants' minds) more advantageous.

106 It is important to note that the appellants did not claim that they had been coerced into entering into the 1973 Option. Indeed, they did not argue that any vitiating factors operated in order to render the contract they had entered into either void or voidable under the general principles of contract law. In the circumstances, therefore, the appellants ought to abide by their respective contracts. However, they are now seeking to resile from their contracts. Put plainly, they are attempting to breach their respective contracts without lawful excuse.

107 Mr Ramayah nevertheless continued to argue that the appellants could not contract out of their constitutional rights and that to allow them to do so would be against public policy. Viewed as general propositions of law, these related arguments appear not only attractive but are also eminently logical and fair. However, the main issue must not be lost sight of and it is this: Do the appellants have a legal right to a pension under the Act, which right is protected under the relevant article(s) of the Constitution? One has only to ask this question to realise that, in accordance with the detailed reasons given above, it has *already* been answered in *the negative*. Indeed, we have summarised the legal position right at the outset of this part of our judgment (at [105] above).

108 In point of fact, there was no legal impediment whatsoever to the appellants entering into the contracts they did. As Prof Woon pertinently pointed out, having made the choice to convert to the CPF scheme, the appellants have enjoyed the benefits under that scheme for the last 33 years. Now believing that it is far more advantageous to revert back into the pension scheme, they are seeking to have the best of both worlds. At this juncture, we note that although the appellants claim that they are willing to repay all the moneys they had been given under the CPF scheme, this would not

(as we shall see) restore the parties concerned to the *status quo ante*. This particular point is of special legal significance in so far as the doctrine of *estoppel* is concerned – an issue which we deal with in the next part of this judgment. It will suffice for the moment to note the more basic point that the appellants enjoyed far more than just the monetary benefits that were given to them under the CPF scheme. It is therefore rather disingenuous of them to now argue that by returning the moneys they had received under this scheme, they would be returning all parties to the position that existed at the point they had opted to convert to the CPF scheme, *viz*, as at 1973.

109 As we have alluded to above, what the appellants are attempting to do, in substance and effect, is to resile from a contract entered into validly and in good faith simply because they are of the view that the contract – having existed for the last 33 years – is no longer to their advantage. Viewed in this light, they are attempting to ask this court not only to sanction a breach of contract but are also asking this court to wholly abandon – indeed dismantle – the very foundation and structure of the law of contract itself. The law of contract is, simply put, premised on parties fulfilling promises made to each other pursuant to a legal agreement entered into between them. What, therefore, the appellants are attempting to do is to ignore the very foundation of what a legal contract is about in the first instance. If parties were allowed to walk away from contracts simply because they felt that the contract entered into was no longer to their advantage, chaos would ensue. Indeed, this would be an understatement. The very concept of an ordered society depends on parties observing the law in general and the promises validly made under law to each other in particular. This is not only obvious and axiomatic; it is utterly essential to a proper functioning of society itself.

110 As we have already alluded to above, the appellants in fact enjoyed more than just the moneys that were credited into their respective CPF accounts. Indeed, there is a further legal reason why they cannot now resile from their respective contracts. This relates to the doctrine of estoppel, to which our attention must now turn.

The issue of estoppel

111 The respondent also argued that the appellants were clearly estopped from claiming that they could have their post-1973 service taken into account in calculating the pension payable. The basic line of argument, as we understand it, was as follows. It was well accepted that estoppel arose when there had been a clear or unequivocal promise or representation which was intended to affect the legal relationship between the parties and which indicated that the promisor would not insist on his strict legal rights against the promisee. By choosing to convert to the CPF scheme, the appellants represented to the Government that they would not subsequently insist on reverting to the pension scheme. Alternatively, having enjoyed the benefit of the CPF payments made by the Government to their CPF accounts for the past 33 years, the appellants were estopped by their conduct from insisting that they were not bound by the terms of the 1973 Option entered into.

112 Second, the promise or representation must in some way have influenced the conduct of the party to whom it was made and the promisee must have suffered some "detriment" in reliance on the promise. This might mean that the promisee must have done something which he was not previously bound to do and as a result have suffered loss, for example, by incurring expenditure in reliance on the promise. In addition, it must also be inequitable for the promisor to go back on the promise. In the circumstances, so the argument went, this requirement was more than satisfied in the present case. The Government had altered its position to its detriment by making CPF contributions for the past 33 years to the appellants' accounts on the basis that they were not on the pension scheme. It was therefore inequitable for the appellants to insist on returning to the pension scheme.

113 Although the respondent's argument centring on estoppel is, at first blush, a persuasive – and even powerful – one, a threshold question arises, in our view, as to whether or not the doctrine of estoppel is relevant in the first instance. Let us elaborate.

114 In the first instance, there are many varieties of estoppel. It is unclear which particular variety the respondent was relying upon. The respondent was, presumably, relying upon *promissory* estoppel which was first fully expounded upon by Denning J (as he then was) in the seminal English decision of *Central London Property Trust Limited v High Trees House Limited* [1947] KB 130. However, at this juncture, it is important to note that the doctrine of promissory estoppel was developed in order to avoid the injustice that would otherwise result when a contracting party pleaded an absence of consideration. Indeed, this particular doctrine is premised upon the rationale of unconscionability. Its basic legal contours are clear, although specific difficulties with respect to certain aspects of the doctrine remain. For our present purposes, however, it would appear that there is no need for the respondent to invoke the doctrine of promissory estoppel in the first instance for the very simple reason that the appellants have not argued that the contracts entered into by them lack valid consideration. Indeed, by invoking the doctrine of promissory estoppel, the respondent appears, whether by design or otherwise, to be utilising this doctrine as a cause of action in itself. Whether or not this is permissible is an issue that is still shrouded in some controversy. It was always assumed that such a course of action was impermissible. However, the leading Australian High Court decision of *Waltons Stores (Interstate) Limited v Maher* (1988) 164 CLR 387 allowed the doctrine of promissory estoppel to be utilised as a cause of action in itself: as (in traditional terminology) a "sword" (as opposed to merely a "shield" or defence (as exemplified in the oft-cited English Court of Appeal decision of *Combe v Combe* [1951] 2 KB 215)). There is, in fact, some indication that even in England, a more flexible approach might be adopted. In the recent English Court of Appeal decision of *Baird Textiles Holdings Ltd v Marks & Spencer plc* [2002] 1 All ER (Comm) 737, for example, Sir Andrew Morritt VC did refer to the Australian High Court decision of *Waltons Stores (Interstate) Limited v Maher*. Morritt VC, whilst not completely closing the door to allowing estoppel to function as a cause of action in and of itself, was clearly reluctant to adopt a more positive stance – citing the absence of precedent as well as the need for sufficient certainty (which he did not find on the facts) (see *ibid* at 751). The learned judge did, however, acknowledge that the House of Lords might adopt a different (and more liberal) approach in the future (at 751–752). Judge and Mance LJJ were also of a similar view: emphasising both the point from precedent as well as the desirability of distinguishing amongst the various categories of estoppel (at 753–754 and at 760–763 respectively). However, in view of our decision that there are no problems relating to consideration with regard to the contracts entered into by the appellants, we do not have to decide this particular issue in the present appeal.

115 If, however, the respondent were utilising the doctrine of estoppel by *representation* as a defence against the appellants' claim, such a defence would, in our view, be successful for the reasons proffered by the respondent (at [112]–[113] above). We are, nevertheless, of the view that there is in fact no need for the respondent to invoke this doctrine for the simple reason that the appellants' claim cannot succeed because the claim entails resiling from their respective contracts by breaching those very contracts themselves. It is significant to note that there was nothing to indicate that these contracts were rendered either void or voidable by any vitiating factor. In any event, it may be argued that the representation was promissory in nature (as opposed to one of fact) and that the doctrine of *promissory* estoppel ought properly to apply instead. However, as we have already pointed out in the preceding paragraph, there is no need for the respondent to invoke the doctrine of promissory estoppel in the first instance.

116 A similar reason to that set out in the preceding paragraph would also render the invocation, by the respondent, of yet another variety of estoppel unnecessary, *viz*, estoppel by convention (see generally Piers Feltham, Daniel Hochberg & Tom Leech, *Spencer Bower, The Law Relating to Estoppel*

by Representation (LexisNexis, 4th Ed, 2004) ("*Spencer Bower*") at pp 7–8 and (especially) ch VIII, as well as Justice K R Handley, *Estoppel by Conduct and Election* (Sweet & Maxwell, 2006) at ch 8). As *Spencer Bower* put it (at paras VIII.2.1 and VIII.2.2):

> An estoppel by convention, it is submitted, is an estoppel by representation of fact, a promissory estoppel or a proprietary estoppel, in which the relevant proposition is established, not by representation or promise by one party to another, but by mutual, express or implicit, assent. This form of estoppel is founded, not on a representation made by a representor and believed by a representee, but on an agreed statement of facts or law, the truth of which has been assumed, by convention of the parties, as a basis of their relationship. When the parties have so acted in their relationship upon the agreed assumption that the given state of facts or law is to be accepted between them as true, that it would be unfair on one for the other to resile from the agreed assumption, then he will be entitled to relief against the other according to whether the estoppel is as to a matter of fact, or promissory, and/or proprietary.
>
> The formulation of the propositions contained in the preceding two sentences that appeared in the previous edition of this work confined the doctrine to conventions as to matters of fact between parties entering a transaction, and made no reference to unfairness. Although that formulation has been expressly approved by the Court of Appeal, it has been amended because, first, the House of Lords has held that an estoppel may be founded on a convention as to law, and, secondly, it is now recognised that reliance, to found an estoppel, must be such that it would be unfair to resile, but it is not necessary that the parties be about to enter a transaction.

The above is, of course, only a very basic statement of principle. In any event, the respondent did not raise this particular category of estoppel in his arguments before us and we therefore say no more about it.

Conclusion

117 Mr Ramayah referred repeatedly to the social policy underlying the grant of a pension under the Act. In particular, he referred to certain observations by the then Prime Minister on 21 July 1959 (see [15] above).

118 If we may say so, the irony is that nothing in the factual matrix in the present appeal militates against the ideals embodied in the above observations – ideals which Mr Ramayah so passionately argued for. Even more ironically, the position is, in fact, quite the *contrary*. We cannot see how it could be argued that where, as in the present appeal, the officers concerned (here, the appellants) are, in fact, offered a *free choice to opt for what (in their minds) is a better scheme*, the ideals just mentioned have been undermined or contravened. Such an argument is, with respect, both illogical as well as misleading. Indeed, there is even evidence before us that the 1973 Option had objectively benefited the appellants over the last 33 years. It is true that they now feel that they are better off opting back into the pension scheme. However, they have disingenuously omitted throughout to state that they have benefited from the CPF scheme in ways that cannot be quantified and which may still redound to their benefit right to the present time. For example, as Prof Woon pertinently pointed out, like all other Singaporeans who contribute to the CPF, the appellants have enjoyed the benefits that come with membership of the CPF scheme, including the possibility of using CPF funds to purchase a house or a flat. Indeed, as already mentioned, the appellants enjoyed these benefits for 33 years.

119 However, be that as it may, the main issues before us are legal ones and must be determined in an objective fashion regardless of the motives of the parties concerned. Bearing this in mind and

applying the relevant legal principles to the facts of the present proceedings, we now summarise our findings, which have been elaborated upon in much greater detail above.

120 We find, first, that the appellants have no legal right to a pension under the Act. On this threshold ground alone, the appeal must fail. In any event, even if it could be argued that there was a right, the appellants have failed to prove that s 9(*d*) of the Act furnishes them with such a right. Even if they had done so, it is clear that the rights sought to be protected under the Constitution (in particular, Art 112(1) thereof) are wholly different from the right relied on by the appellant. In the circumstances, there was no legal impediment to the appellants opting – via contract – for an alternative scheme which they thought was more appropriate to their needs. Having opted for such a scheme, they are contractually bound by it and the condition of irrevocability in the contract is otiose inasmuch as it merely reflects the basic principle of contract law to the effect that one cannot unilaterally resile from a contract validly entered into. We also find that the appellants are, in any event, estopped from so resiling even if they would otherwise have had a legal right to do so, although it is, based on the facts of the present proceedings, unnecessary (for the reasons set out above) for us to actually apply the doctrine of estoppel in the first place.

121 In the premises, we dismiss the appeal with costs, and with the usual consequential orders to follow.