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Administrative Law—State Pension Not Subject to Diminution of Payment by Change of Mortality Tables

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missioner; personal rights or property rights are not involved which would constitute the review a quasi-judicial act.

Judge Van Voorhis, concurring, disagreed with this conclusion, although he favored dismissal since it did not appear on the record that the petitioner had demanded before the Commissioner the rights contended for an appeal. In his view, the petitioner had a property interest, the hearing was quasi-judicial in nature, and there was a triable issue of fact which would require testimony and the right to cross-examine. The cases he cites to support his premises that due process applies, however, involved the seizure of property or the imposition of a burden or public judgment upon a person or group by government[20] and not a contest of governmental power to act by individual taxpayers. Even though taxpayers have been recognized as having an interest (sometimes referred to as proprietary) which permits them to sue municipal corporations and local government units,[21] it should not follow that they must necessarily be accorded all the procedural forms associated with due process where specific property or personal rights are being moved against by governmental agencies other than through the medium of taxation which imposes a burden upon the community at large equally.

State Pension Not Subject to Diminution of Payments by Change of Mortality Tables

The Teachers Retirement System in New York consists in part of an annuity which is paid to employees upon retirement from contributions made by the members.[22] The Education Law provides that the annuity "shall be the actuarial equivalent of his [the member's] accumulated contributions at the time of his retirement."[23]

In 1935, the stability of this system was placed in considerable doubt by the dictum in *Roddy v. Valentine*,[24] to the effect that

> [w]here the statutory scheme creates a fund wholly or largely out of public moneys, the interest of the member down to the point where there has been compliance with all precedent conditions and the award has been or as of right should have been made, can hardly be deemed contractual . . . . [W]hatever its legal nature may be, there seems to

20. Hecht v. Monaghan, *supra* note 16; New York Edison Co. v. Maltbie, 271 N.Y. 103, 2 N.E.2d 277 (1936); New York State Guernsey Breeders Co-op v. Noyes, 284 N.Y. 197, 30 N.E.2d 471 (1940); Rochester Transit Corp. v. Public Service Comm., 271 App. Div. 406, 66 N.Y.S.2d 593 (3d Dep't 1946).

21. See Bradford, *Municipal Taxpayers and Standing to Sue*, 2 BUF. L. REV. 140. Also see N. Y. GEN. MUN. LAW §51.

22. N. Y. EDUCATION LAW §501(12) and (14).

23. N. Y. EDUCATION LAW §510(2) (a).

24. 268 N.Y. 228, 231, 197 N.E. 260, 262 (1935).

> be no doubt that it is subject to change or even to revocation at the will of the legislature.

In 1938, section 7 of Article 5 of the New York State Constitution was adopted and approved:

> After July first, nineteen hundred and forty, membership in any pension or retirement system of the state or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired.

In *Birnbaum v. Teachers Retirement System*,[25] a problem arose in this area under subdivisions 4 and 5 of section 508 of the Education Law. Those provisions contemplate a periodic review and adjustment of mortality and annuity tables used to compute the annuities on retirement. In 1946, a new mortality table was adopted which had the effect of reducing by approximately 5% the payments that would have been received under the mortality table used in 1940.[26] The state proposed to apply the new mortality table to all retirements as they came due. The plaintiffs, representing employees who entered the retirement program prior to the enactment of the new mortality table, contended that under the Constitutional provision, their "benefits" were being "diminished or impaired". The state contended that subdivisions 4 and 5 were incorporated into the contract established by the constitutional provision, thereby making the annuity computable at the time of retirement and subject to the table in use at that time.

The majority determined (6-1) that the constitutional provision was intended to perfect the rights of employees under the retirement system upon their entering state employ; also that section 508, while contemplating review of mortality and annuity tables, did not explicitly relate to persons already members of the retirement system and such intention should not be read into the statute. Therefore, only persons beginning employment subsequent to the adoption of new mortality tables would be affected, persons already under the system having had their rights established under tables in existence when they commenced their employment.

The dissent argued that under the terms of the statute the value of the annuity was to be computed at retirement under mortality tables which reflected current life expectancy not life expectancy in the past. This construction would not violate the literal meaning of the constitutional provision since the mem-

25. 5 N.Y.2d 1, 176 N.Y.S.2d 984 (1958).

26. Due to a longer life expectancy reflected in the new table, the same lump sum accumulated in the fund would have to be spread over a longer period in calculating the regular payments. The latter would thus necessarily be smaller.

bers rights are definite, fixed, and not subject to the mere whim of the legislature. It was pointed out that rigid adherence to an obsolete mortality table could spell bankruptcy for the system.

The dissent's position is very plausible; the construction of the constitutional provision as a guarantee of rights under the statute is consistent with the language used. But the majority, while perhaps passing over some of the statutory language lightly, may be keeping a conscious eye on employees who have relied on the more favorable construction in choosing their life work. The majority construction treats the employees more equitably; the dissent's position, while following the state's financial framework established under the statute, leaves the employees without a part of the inducement which may have influenced their choice of state employment.

Civil Service Reclassification

A. *Clare v. Silver*:

Civil Service classifications, although subject to judicial review, will be set aside only if "without rational basis and wholly arbitrary",[27] *i.e.*, if the Commission's decision is clearly illegal or amounts to an abuse of descretion.[28]

In *Clare v. Silver*,[29] the Court reviewed a civil service classification and held that the classification of a county detective as a process server did not violate his tenure rights as an honorably discharged veteran.[30] He had had no right to be assigned all the duties of a county detective, but rather had been required to perform those duties actually assigned to him by the district attorney, and his actual duties for the past seven years had been limited to process serving. The Court felt that the classification did not *remove* the plaintiff from his county detective position. His work remained the same after the classification, since the Commission, in systematizing the work in the district attorney's office, followed a pattern which had already been worked out and was in operation at the time. Thus the classification was upheld as not without a rational basis.

27. Meenaugh v. Dewey, 286 N.Y. 292, 306, 307, 36 N.E.2d 211, 219 (1941).

28. People ex rel. Schau v. McWilliams, 185 N.Y. 92, 77 N.E. 785 (1906). In *People ex rel. Sims v. Collier*, 175 N.Y. 196, 67 N.E. 309 (1903), the Court considered the Civil Service Commission's action as judicial or quasi-judicial in its nature. Three years of experience under this decision proved that the Court had in effect assumed the functions of the Commissioners. Thus, in a change of policy in 1906, the classifications were deemed to be more of a legislative or executive than judicial character. This changed the review action from certiorari to mandamus.

29. 4 N.Y.2d 107, 172 N.Y.S.2d 801 (1958).

30. NEW YORK CIVIL SERVICE LAW §22 provides that any honorably discharged veteran of the armed forces may not be removed from a civil service position of employment except for incompetency or misconduct after a hearing upon due notice.