

CHAPTER 16:06

STATE SERVICE (PENSIONS) ACT

Acts 30/1971, 73/1971, 11/1973 (s. 16), 4/1974 (s. 28), 24/1975 (s. 8), 42/1977 (s. 8), 24/1987 (s. 13); S.I.s 566/1979, 849/1980, 655/1983, 41/1984, 257/1985, 286/1986, 39/1987, 179/1993, 6/2000 (s.151), 6/2005 (s. 34)

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SCHEDULE

Repealed Legislation.

AN ACT to provide for the payment of pensions, gratuities and other benefits to or in respect of persons employed by the State on retirement, discharge, resignation, death or other termination of service; and to provide for other matters connected with or incidental to the foregoing.

[Date of commencement: 1st July, 1971.]

1 Short title

This Act may be cited as the State Service (Pensions) Act [*Chapter 16:06*].

2 Interpretation

(1) In this Act—

“child” means an unmarried son or daughter under the age of eighteen years, and includes—

- (a) a posthumous child, a stepchild, and a child legally adopted; and
- (b) subject to subsection (2), an illegitimate child;

“contribute” means pay contributions to the Consolidated Revenue Fund in terms of this Act;

“contributions” means the amounts contributed by a contributor to the Consolidated Revenue Fund in terms of this Act or any other law and includes any amounts paid by a contributor—

- (a) in respect of a period of service which is recognized in terms of subsection (3) of section *five* or was recognized under the corresponding provision of the former pensions law as being continuous; or
- (b) as arrear contributions in respect of service with the State; but does not include any interest paid in respect of the amounts referred to in paragraphs (a) and (b); “contributor” means a person who is contributing;

“fixed date” means the 1st July, 1971;

“former pensions law”, in relation to a member referred to in paragraph (a) of subsection (1) of section *three*, means the law relating to pensions which was applicable to him immediately before the fixed date; “interest” means interest compounded annually;

“medical board” means a board of two or more medical practitioners registered in terms of the Health Professions Act [*Chapter 27:19*] appointed by the Minister for the purposes of this Act;

[Definition amended by section 151 of Act 6 of 2002]

“member” means a person who is employed full-time in a uniformed force;

“Minister” means the Minister of Finance or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“non-contributor” means a member who is not a contributor;

“pensioner” means a person who is in receipt of a pension in terms of this Act and was a member immediately before he became entitled to that pension;

“uniformed force” means—

- (a) the Regular Force of the Police Force; or
- (b) the Regular Force of the Army, the Air Force or the Guard Force; or (c) the Prison Service.

(2) The Public Service Commission, the Police Service Commission, the Prison Service Commission or the Defence Forces Service Commission, as the case may be, may from time to time determine—

- (a) the conditions subject to which it will recognize any unmarried person under the age of eighteen years as the illegitimate child of a member or pensioner; and
- (b) the circumstances in which and the conditions subject to which any benefit may be paid in terms of this Act or any applicable regulations to or in respect of a person recognized by the Commission concerned as the illegitimate child of a member or pensioner;

and may at any time amend or revoke any such determination.

3 Application of Act

(1) The provisions of this Act shall apply to all persons who—

- (a) on the fixed date are employed by the State in a uniformed force, including any such persons who are, at the fixed date, on secondment to an approved service; or
- (b) are appointed after the fixed date to employment in a uniformed force.

(2) For the avoidance of doubt, it is declared that, if provision is made in pursuance of subsection (5) of section 48 of the Constitution applying, with such modifications as are deemed necessary or expedient, all or any of the provisions of this Act to persons appointed to the staff of Parliament, effect shall be given to those provisions as applied as if those persons were members.

4 Pensions and other benefits to be prescribed

The Minister shall prescribe the pensions, gratuities or other benefits which shall be payable to members on their retirement, discharge, resignation or other termination of office and to the widows, children or dependants of such members or former members, or to their estates, on their death whilst in the employment of the State or after the termination thereof whilst in receipt of a pension:

Provided that in prescribing such benefits the Minister may—

- (a) provide that no pension, gratuity or other benefit shall be payable to or in respect of a member until he has completed a specified period of service with the State;
- (b) provide that a pension shall be payable to a member with effect from the date he attains a prescribed age, whether or not his service with the State is thereupon terminated; (c) make no provision in respect of particular classes of members.

5 Pensionable service and arrear contributions

(1) Subject to this Act, the pensionable service or pensionable employment with respect to which any pension or other benefit is to be calculated shall be as prescribed.

(2) Regulations made in terms of section *seventeen*—

- (a) shall prescribe that pensionable service includes any period in respect of which contributions have been paid; and
- (b) may prescribe that, subject to the payment of contributions or arrear contributions, pensionable service includes—
 - (i) time spent on attachment or secondment to any other service;
 - (ii) any period spent undergoing national service or training for an approved qualification;
 - (iii) any previous service with the State before he became a contributor, whether such previous service is continuous with his service as a contributor or has been interrupted;
 - (iv) any period of service or employment otherwise than in the service of the State;
 - (v) any military service which—

- A. was recognized under the former pensions law as pensionable service in respect of the member concerned; or
- B. could have been recognized under the former pensions law which was applicable or which would have been applicable to that member had he been a member immediately before the fixed date and which the Minister declares shall be regarded as pensionable service in respect of the member concerned:

Provided that such regulations may provide that military service referred to in subparagraph (v) or any service with the State prior to the fixed date may be included as pensionable service without any contributions having been paid in respect thereof but any such service shall not be taken into account for the purpose of calculating qualifying service for a refund of contributions.

(3) Any amount which a contributor has elected to pay as arrear contributions in respect of any period of service or employment which is to be regarded as pensionable service shall, unless paid in full within one month from the date the election was made, be paid in such manner as may be determined by the Minister.

(4) In the event of the death, discharge, resignation or retirement of a contributor who has made an election referred to in subsection (3) before the amount payable by him in terms of that subsection has been paid, the balance of the amount so payable shall be set off against any pension, gratuity, refund of contributions or other benefit due to or in respect of the contributor under this Act or against any other moneys due to him by the State.

(5) For the purposes of subsection (4), the Minister may direct that a sufficient portion of the pension due to or in respect of the contributor may be commuted in accordance with the provisions of subsection (8), as read with subsection (1), of section *eight*, notwithstanding anything to the contrary contained in this Act.

(6) The period of pensionable service or pensionable employment shall be calculated by the month and any fraction of a month shall be disregarded.

(7) In the case of a member who is employed full-time in a uniformed force, if any previous service included in his pensionable service was service otherwise than in a uniformed force— (a) for the purpose of calculating—

- (i) any pension or other benefit which is payable to or in respect of the widow or any child of such person; or
- (ii) any pension which is payable to such person on his discharge on the grounds of ill-health; the whole of such previous service shall be reckoned as pensionable service;

(b) for the purpose of calculating any pension which is payable to such person, other than a pension referred to in subparagraph (ii) of paragraph (a), only five-sixths of such service shall be reckoned as pensionable service.

6 Transfer or secondment of contributors

(1) If a contributor who is employed in a uniformed force is or has been transferred to any other employment with the State as a contributor, the period of his service which was recognized in terms of this Act as pensionable shall be regarded as pensionable service.

(2) If a contributor is or has been transferred from the service of the State, otherwise than in a uniformed force, to a uniformed force—

- (a) for the purpose of calculating—
 - (i) any pension or other benefit which is payable to or in respect of the widow or any child of such person; or
 - (ii) any pension which is payable to such person on his discharge on the grounds of ill-health; the whole of such previous service shall be reckoned as pensionable service;
- (b) for the purpose of calculating any pension which is payable to such person other than a pension referred to in subparagraph (ii) of paragraph (a), only five-sixths of such service shall be reckoned as pensionable service.

(3) If a contributor—

- (a) is transferred from the employment of the State to employment in the service of Parliament or with an approved government, body or institution; or
- (b) has been transferred from employment in the service of Parliament or with an approved government, body or institution to the employment of the State; the provisions relating to the payment of a pension or other benefit in his case shall be as prescribed or as the Minister may in his case fix.

7 Date pension becomes payable

A pension payable under this Act which is payable—

- (a) on the retirement or discharge of the member shall be payable with effect from the day following the date of his retirement or discharge;
- (b) on the member attaining pensionable age shall be payable with effect from the day following the date on which he attains pensionable age;
- (c) on the death of a member or pensioner shall be payable with effect from the day following the date of his death.

8 Commutation of pension of former contributor

(1) The Minister may, at the request of a contributor who is about to become a pensioner or of a pensioner who, immediately before he became entitled to his pension, was a contributor, commute—

- (a) if the pension does not exceed the rate of two hundred and fifty dollars per annum, the whole or any portion of that pension;
- (b) if the pension exceeds the rate of two hundred and fifty dollars per annum but does not exceed the rate of six hundred dollars per annum, a portion of that pension not exceeding two hundred dollars;
- (c) if the pension exceeds the rate of six hundred dollars per annum, a portion of that pension not exceeding one-third thereof.

(2) Notwithstanding anything to the contrary contained in this Act on the application of a pensioner who is in receipt of a pension payable in terms of the Pensions and Other Benefits Act [*Chapter 16:01*], the Pensions Officer may commute the whole of that pension where that pension is less than the minimum pension specified for the time being in a notice in terms of section 3 of the Pensions Review Act [*Chapter 16:03*], as payable to pensioners.

(3) Subsection (6) shall not apply to any application made in terms of subsection (2).

(4) Nothing in subsection (1) shall authorize the commutation of any pension or part of a pension which is payable—

(a) to a widow consequent on the death of a member or pensioner; or (b) in respect of a child.

(5) An application for the commutation of the whole or any portion of a pension shall be made on the form and in the manner prescribed.

(6) On receipt of an application in terms of subsection (5) the Minister shall, subject to subsection (1)—

- (a) if the application is made before, or within one month after, the date the applicant became entitled to the pension, grant the application;
- (b) if the application is not made within the period specified in paragraph (a), grant provisional approval of the application for commutation.

(7) Where provisional approval of an application has been granted in terms of paragraph (b) of subsection (6), the applicant shall complete a declaration of health in the prescribed form and shall send the completed declaration to, and submit himself to examination by, a medical board.

(8) The medical board shall, after examining the applicant in terms of subsection (7), forward to the Minister a report on that applicant in the prescribed form.

(9) If in its report in terms of subsection (8) the medical board—

- (a) certifies that the applicant is not suffering from nor, in its opinion, is especially liable to suffer from any disease or physical disability likely to affect adversely his normal expectation of life which it considers to be fully up to the average for persons of the age of the applicant, the Minister shall grant, subject to the provisions of subsection (1), the commutation applied for;
- (b) is unable to certify as required by paragraph (a), the Minister shall refuse to grant the commutation applied for.

(10) The amount of the single cash payment to be made on the commutation of a pension shall be computed by multiplying the annual rate of pension to be commuted by the prescribed commutation factor in relation to the age of the applicant calculated to the nearest half year or, where his age is midway between the half years, to the half year nearest above his age at the date the commutation is to be effected.

(11) The commutation of a pension in terms of this section shall be effective—

- (a) in the case of an applicant referred to in paragraph (a) of subsection (6), on the date on which he becomes entitled to his pension;
- (b) in the case of an applicant not referred to in paragraph (a) of subsection (6), on the first day of the month following that on which the commutation is granted.

9 Temporary commutation of pension of former non-contributor

(1) On application in writing being made by—

- (a) a non-contributor who is about to become entitled to a pension; or
- (b) a pensioner who immediately before he became a pensioner was a non-contributor which is made within five years from the date he became entitled to that pension; the Minister may authorize the temporary commutation of a portion, not exceeding one-quarter, of such pension.

(2) Where the Minister authorizes a temporary commutation in terms of subsection (1), the portion of the pension to be commuted shall be commuted—

- (a) in the case of a non-contributor who is about to become entitled to a pension, on the date he becomes so entitled;
- (b) in the case of a pensioner, on the first day of the month following that on which the Minister has authorized the temporary commutation;

by a single cash payment determined in accordance with the provisions of subsection (4), and the pension payable shall be reduced accordingly with effect from the date referred to in paragraph (a) or (b), as the case may be.

(3) A pension which is reduced in terms of subsection (2) shall be paid at the original rate after a period of five years has elapsed from the date the pensioner became entitled to the pension.

(4) A cash payment made in terms of subsection (2) shall be calculated by multiplying—

- (a) the portion of the monthly rate of the pension to be commuted, calculated to the nearest cent; by
- (b) the number of complete months required to complete a period of sixty months from the date the pensioner became entitled to the pension.

10 Proof of age, marriage and date of death

(1) A member shall, when so required, submit such proof as may be required to the satisfaction of the Pensions Officer of the date of his birth.

(2) No pension or other benefit provided for under this Act shall be paid to a widow of a member or of a pensioner until proof of marriage to, and date of the death of, the husband has been furnished to the satisfaction of the Pensions Officer.

(3) No pension or other benefit under this Act shall be paid in respect of a child until proof has been furnished to the satisfaction of the Pensions Officer that the child is a child as defined in section *two*.

11 Payment of pensions in respect of step-children

Notwithstanding anything to the contrary contained in this Act, if a pension is being paid under this Act in respect of a child—

- (a) because of the death of the father of that child, no further pension shall be payable under this Act in respect of that child on the death of the step-father or the mother of that child;
- (b) because of the death of the step-father of that child, no further pension shall be payable under this Act in respect of that child on the death of the father or the mother of that child.

12 Pensions and other benefits not to be pledged or ceded, etc.

Subject to the Maintenance Act [*Chapter 5:09*], Part V of the Children's Act [*Chapter 5:06*], and of subsection (5) of section *five* and of sections *eight*, *nine* and *sixteen*, no pension or other benefit or right thereto shall be capable of being assigned or transferred or otherwise ceded or of being pledged or hypothecated, nor shall the same or any contributions made by a contributor be liable to be attached or subjected to any form of execution under a judgment or order of a court of law, and in the event of the beneficiary attempting to assign, transfer or otherwise cede or pledge or hypothecate a pension or such other benefit or right to a pension or such other benefit, payment of the pension or such other benefit may be withheld, suspended or entirely discontinued if the President so determines:

Provided that the Minister may direct the payment of such pension or part thereof to any one or more of the dependants of the beneficiary during such period as he may direct.

[Section amended by section 34 of Act 6 of 2005]

13 Insolvency of pensioner

If the estate of any person who is in receipt of a pension under this Act is sequestrated or assigned, such pension shall not form part of the assets in his insolvent or assigned estate.

14 Suspension of pension

(1) If a pensioner is convicted of any offence and is sentenced to death or to any term of imprisonment exceeding three months without the option of a fine, payment of the pension to him may be discontinued and payment of the pension or any portion thereof may, during such person's imprisonment, be paid to or for the benefit of any widow, child or other dependant, and the selection of such dependant shall be in the discretion of the Minister.

(2) On the discharge from prison of a person referred to in subsection (1), the payment to him of the pension shall be resumed with effect from the date of such discharge.

15 Suspension, reduction or forfeiture of pension or gratuity

If any person who becomes entitled to a pension or gratuity or is in receipt of a pension under this Act—

- (a) is found by a board appointed by the President for the purpose to have made improper use of or to have disclosed in an improper manner any information which he may have obtained in the course of his employment; or
- (b) is found by a competent court to have been guilty of misappropriation of public moneys or State property which would, if it had been discovered before he became entitled to a pension or gratuity, have rendered him liable to discharge or dismissal; or
- (c) is found to have made a false statement for the purpose of obtaining a pension or gratuity or commutation of pension, knowing the statement to be false or not believing it to be true; or
- (d) refuses to comply with a reasonable request made by any Minister to afford all assistance and information in his power relating to any appointment formerly held or class of duty formerly carried out by him; or
- (e) solicits or, without the consent of the Minister responsible for the department in which he was last employed, accepts, directly or indirectly, any gift of a pecuniary value after retirement in connexion with

his service; the President may order that the right to any pension or gratuity to which that person has become entitled or the pension of which he is in receipt shall be suspended, reduced or forfeited.

16 Deduction from pension, gratuity, refund of contributions or other benefit

(1) The Minister may authorize the deduction from any pension, refund of contributions, commutation of pension or other benefit payable under this Act to a member who has been discharged or dismissed for misconduct of an amount equal to any direct loss which the State has sustained by reason of the conduct of the member on account of which the member was discharged or dismissed from the service of the State.

(2) The Minister may authorize the deduction from any pension, gratuity, refund of contributions or other benefit to which a member or person or his estate is entitled under this Act of a liquidated amount which that member or person is liable to pay to the State.

(3) To facilitate the recovery of an amount due under this section, the Minister may order the commutation, in accordance with the provisions of subsection (8), as read with subsection (1), of section *eight*, of all or part of the pension payable to the member notwithstanding anything to the contrary contained in this Act.

17 Regulatory powers

(1) Subject to subsection (4), the Minister may by regulation provide for all matters which by this Act are required or are permitted to be prescribed or which, in his opinion, are necessary or convenient to be provided for in order to carry out or give effect to the provisions of this Act.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) the payment of contributions, including arrear contributions, and the rate at which contributions shall be paid or interest shall be paid on arrear contributions;
- (b) special provisions relating to members who had transferred from the employment of the Government of the former Federation or are seconded or transferred to or from an approved service;
- (c) the suspension of any pension payable to a contributor who was discharged by reason of ill-health, physical or mental unfitness or incapacity or personal injury and who refuses or fails to present himself for medical examination when so required.

(3) The Minister may, in the exercise of the powers conferred upon him by subsection (1), make different provision with respect to different classes of members.

(4) The Minister shall not make regulations in terms of subsection (1) which relate to—

- (a) members of the Regular Force of the Police Force, unless such regulations have been approved by the Minister of Law and Order after considering the recommendation of the Police Conditions of Service Board; or
- (b) members of the Regular Forces of the Army, the Air Force and the Guard Force, unless such regulations have been approved by the Minister of Defence; or
- (c) members of the Prison Service, unless such regulations have been approved by the Minister of Justice after considering the recommendation of the Prison Board; or
- (d) members not referred to in paragraph (a), (b) or (c), unless such regulations have been approved by the Minister of the Public Service, on the recommendation of the Public Services Board.

18 Make-up of benefits

(1) If, on the termination of the service of a member referred to in paragraph (a) of subsection (1) of section *three*, the benefits payable in terms of this Act to him or to or in respect of his widow or any child are less than the benefits that would have been payable had the former pensions law continued to apply to him, the benefits payable under this Act shall be increased by the amount of the difference.

(2) If—

- (a) on the termination of the service of a member who had been transferred from the employment of the former Federal Government; or
- (b) whilst a person referred to in paragraph (a) is receiving a pension in terms of this Act; or
- (c) on the death of a person referred to in paragraph (a) who was in receipt of a pension in terms of this Act; the aggregate of the benefits payable in terms of this Act to him or to or in respect of his widow or any child and all the benefits payable or paid in terms of Schedule II to the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council, 1963, of the United Kingdom and all the benefits, if any, which are paid in terms of the appropriate pensions legislation of the Government of Zambia or Malawi, as the case may be, to him or to or in respect of his widow or any child is less than the benefits that would have been payable to him or to or in respect of such widow or child in terms of this Act had the aggregate of his pensionable employment with the Government of the former Federation, including any previous service with any military forces which may be taken into account in computing his pension or gratuity in terms of his conditions of service with that Government, and his pensionable employment with the Government of Northern Rhodesia or Nyasaland, as the case may be, been pensionable service in terms of this Act, the benefits payable to the member or to or in respect of his widow or any child shall be increased by the amount of the difference.

(3) If, on the termination of the service of a member referred to in paragraph (a) of subsection (1) of section three or in paragraph (a) of subsection (2), a pension is paid to him or to or in respect of his widow or any child in terms of the Pensions and Other Benefits Act [Chapter 16:01] and not in terms of this Act, the provisions of subsection (1) or (2), as the case may be, shall apply, *mutatis mutandis*, in determining whether there should be any make-up of benefits in terms of the said subsection as though the pension were payable in terms of this Act and the relevant regulations:

Provided that the pension shall be calculated at the appropriate rate specified in section 15 or 17 as the case may be, of the Pensions and other Benefits Act [Chapter 16:01].

(4) Notwithstanding any other provision of this Act but subject to subsection (5) and (7), if the rate of any pension payable to any person in terms of this Act, when aggregated with any other pension payable to him in terms of any other enactment, is less than the minimum pension, if any, specified for the time being in a notice in terms of section 3 of the Pensions Review Act [Chapter 16:03], as payable to pensioners, the rate of pension payable to that person in terms of these regulations shall be increased by the amount of the difference.

(5) In calculating the rate of any pension for the purposes of subsection (4), no account shall be taken of any temporary commutation of such pension.

(6) If the pension that was paid to any person in terms of this Act on or after the 1st January, 1982, 1983, was less than that which would have been payable to him had subsections (4) and (5) then been in operation, such person shall be paid an amount equal to the difference.

(7) This section shall not apply in respect of a pension payable in terms of paragraph (b) of subsection (1) of section 8 of the State Service (Pensions) (Uniformed Forces) Regulations, 1976, to a member who has been dismissed.

(8) For the purposes of calculating the pension or other benefit payable to any person in respect of the death of a member or pensioner on or after the 1st July, 1985 and before the 3rd October, 1986, the State Service (Pensions) Act (Amendment) Regulations, 1986 (No. 4), published in Statutory Instrument 286 of 1986, shall be deemed to have come into operation on the 1st July, 1985, and where the pension or other benefit so calculated is greater than the amount, if any, actually paid to the person concerned, he shall be paid an amount equal to the difference.

19 Benefits to be paid from Consolidated Revenue Fund

All pensions, gratuities, refunds of contributions, commutations of pensions and other benefits payable in terms of this Act or section 10 of the Police Amendment Act, 1967 (No. 44 of 1967) shall be charged upon and paid from the Consolidated Revenue Fund.

20 Savings

(1) Notwithstanding the repeal of the laws specified in the Schedule—

- (a) any pension or allowance which, immediately before the fixed date, was payable in terms of the Public Services Act [Chapter 90 of 1963] or any regulations made thereunder or in terms of a law specified in the Schedule to or in respect of a person who had been employed by the State or to or in respect of the widow or any child of such a person shall continue to be paid in terms of that legislation;
- (b) the provisions of any Act or law referred to in paragraph (a) shall continue to apply in relation to a pension or allowance referred to in paragraph (a) and to any pension or allowance which may become payable on or after the fixed date to or in respect of a widow or child of a person referred to in paragraph (a)—

(2) Notwithstanding the repeal of the Uniformed Forces Pensions Act [Chapter 139 of 1963], the provisions of that Act shall continue to apply in relation to—

- (a) any pension payable thereunder the right to which accrued before the 13th October, 1967;
- (b) any pension payable to or in respect of a widow, child or other dependant of a person who is or was in receipt of a pension referred to in paragraph (a).

SCHEDULE (Section 20)

REPEALED LEGISLATION

Civil Service War Pensions Act [Chapter 83 of 1963].

Coloured and African Government Employees Pensions Act [Chapter 84 of 1963] and the regulations made thereunder.

Police (Pensions) Regulations, 1967 (Rhodesia Government Notice No. 774 of 1967).

Police (Pensions) (Amendment) Regulations, 1968 (No. 1) (Rhodesia Government Notice No. 351 of 1968).

Police (Pensions) (Amendment) Regulations, 1968 (No. 2) (Rhodesia Government Notice No. 738 of 1968).

Police (Pensions) (Amendment) Regulations, 1969 (No. 3) (Rhodesia Government Notice No. 383 of 1969).

Police (Pensions) (Amendment) Regulations, 1969 (No. 4) (Rhodesia Government Notice No. 806 of 1969).

Prisons (Staff) (Pensions) Regulations, 1968 (Rhodesia Government Notice No. 411 of 1968).

Prisons (Staff) (Pensions) (Amendment) Regulations, 1969 (No. 1) (Rhodesia Government Notice No. 107 of 1969).

Prisons (Staff) (Pensions) (Amendment) Regulations, 1970 (No. 2) (Rhodesia Government Notice No. 803 of 1970).

Defence (Regular Force) (Pensions) Regulations, 1969 (Rhodesia Government Notice No. 340 of 1969). Defence (Regular Force) (Pensions) (Amendment) Regulations, 1969 (No. 1) (Rhodesia Government Notice No. 822 of 1969).

Defence (Regular Force) (Pensions) (Amendment) Regulations, 1970 (No. 2) (Rhodesia Government Notice No. 246 of 1970).

Defence (Regular Force) (Pensions) (Amendment) Regulations, 1970 (No. 3) (Rhodesia Government Notice No. 518 of 1970).