K. K. Jaggia *v.* The State of Punjab (Pandit, J.)

FULL BENCH

Before Inder Dev Dua, Prem Chand Pandit and R. S. Narula, JJ.

K. K. JAGGIA,—*Petitioner*

versus

THE STATE OF PUNJAB,—*Respondent*

Civil writ No. 2141 of 1965.

September 28, 1966

Punjab Civil Services Rules, Volume I Part I—Rule 7.2—Covernment—Whether has the right to suspend government servant during departmental inquiry pending against him—Emoluments payable during the period of suspension—Whether full salary and allowances or only subsistence allowance admissible to him under rule 7.2—Rule 7.2—Whether applies to interim suspension.

Held, that the Government has the inherent right as an employer to suspend a government servant during the departmental inquiry pending against him even though there is no specific provision to that effect in his terms of appointment or the service rules. Such suspension is called interim suspension and is to be distinguished from suspension which is imposed by way of penalty after the departmental inquiry.

Held, that during the period of interim suspension the amount to be paid to such public servant will depend upon the provisions of the statute or the rules in that connection. If there is such a provision, the payment during suspension will be in accordance therewith. If, on the other hand, there is no such provision, the public servant will be entitled to his full emoluments. Rules 7.2 contained in Punjab Civil Services Rules, Volume I, Part I provides for subsistence allowance to be paid to public servants during the period of their suspension and this rule applies both to interim suspension and suspension by way of penalty. A government servant during the period of interim suspension is, therefore, entitled to receive only the subsistence allowance prescribed in the said rule 7.2 and not his full salary and allowances.

Case referred by a Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice R. S. Narula, by order, dated 14th February, 1966, to the Full Bench for decision of the important question of law involved in the case. The case was finally decided by the Full Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua, the Hon'ble Mr. Justice P.C. Pandit and the Hon'ble Mr. Justice R. S. Narula, on the 28th September, 1966.

Petition under Article 226 of the Constitution of India, praying that a writ of Mandamus *or any other appropriate writ, order or direction be issued to the respondent for paying full salary and allowances to the petitioner for the entire period of his interim suspension pending inquiry, viz. 20th September, 1963, onwards along with the costs of this petition.*

S. K. JAIN, AND S. S. DEWAN, ADVOCATES, for the Petitioner.

M. S. PANNU, DEPUTY ADVOCATE-GENETAL, for the Respondent.

ORDER.

PANDIT, J.—K. K. Jaggia, who has filed this petition under Article 226 of the Constitution, joined the service of the Punjab Government in P.W.D., Irrigation Branch on 18th of January; 1949 and was posted as a Sub-Divisional Officer. On 6th of April, 1955, he was ordered to be promoted as officiating Executive Engineer; but this order was not given effect to and he was not actually promoted as such. On 16th of May, 1956, he was placed under suspension and later as a result of a departmental enquiry he was dismissed on 6th October, 1961. This order of dismissal, however, was quashed by Dua; J., on 22nd of August, 1963 as a result of a writ petition (C.W. 279 of 1962), having been filed by the petitioner in this Court. Accordingly, he was reinstated on 20th of September, 1963; but was against suspended on the same date to stand a fresh enquiry. The order of the Punjab Government in this behalf was notified in the Gazette of 27th September, 1963 in the following terms:—

"Order of the Governor of Punjab;

In compliance with the orders of the High Court for the State of Punjab in Civil Writ No. 279 of 1962 passed on the 22nd August, 1963, the Governor of Punjab is pleased to reinstate Shri K. K. Jaggia as Sub-Divisional Officer, P.W.D., Irrigation Branch.

2. Since during the course of earlier departmental inquiry against Shri K. K. Jaggia; copies of the previous statements of prosecution witnesses were not supplied to him for the purpose of their effective cross-examination, the Governor of Punjab is pleased to appoint Shri R. L. Nirola as Inquiry Officer to complete the departmental inquiry against Shri Jaggia in accordance with law after giving him a reasonable opportunity to defend himself and to submit a fresh report thereafter. Prosecuting Deputy Superintendent of

Police, Vigilance, assisted by Prosecuting Inspector, Vigilance, will conduct the case on behalf of the prosecution.

(3) The Governor of Punjab is further pleased to place Shri K. K. Jaggia, Sub-Divisional Officer, under suspension with immediate effect. During the period of suspension he will be allowed subsistence allowance admissible to him under Rule 7.2 of the Punjab Civil Services Rules, Volume I, Part I.

(Sd.) HARDEV SINGH CHHINA,
Secretary.

The petitioner then claimed the arrears of his salary for the period commencing from the date of his suspension till the date of his re-instatement. The Government decided that his claim be disposed of in accordance with the following decision—

(a) for the period of the officer's suspension prior to his dismissal, he was to be paid only subsistence allowance permissible under the rules applicable to such officers.

(b) for the period between the officer's dismissal and his subsequent reinstatement, he should be allowed full pay and allowances, and

(c) before making the payment, it should be verified from the officer what amount; if any, he had earned during the period he remained dismissed, and that amount should be deducted from the pay and allowances due to him.

Aggrieved by this decision of the Government, the petitioner approached this Court by way of a petition under Article 226 of the Constitution (C.W. No. 1646 of 1964) praying that a writ of mandamus be issued to the State of Punjab directing it to pay him full salary and allowances not only for the period between his dismissal and re-instatement but even for the period during which he had remained suspended prior to the order of his dismissal on 6th October, 1961. This petition was allowed by a Division Bench consisting of Shamsher Bahadur and Gurdev Singh, JJ. on 26th May, 1965 and a writ of mandamus was issued to the Punjab State to pay full salary and allowances for the entire period. The present writ petition was filed in this Court on 30th July, 1965 challenging para 3

of Punjab Government Notification published on 27th September, 1963, referred to above in which it was stated that the petitioner was again suspended and it was directed that during the period of suspension he would be allowed subsistence allowance admissible to him under rule 7.2 of the Punjab Civil Services Rules, Volume I, Part I. This order is challenged mainly on two grounds, namely—

(1) that the Government had no power or jurisdiction to suspend the petitioner pending an enquiry either under the Punjab Civil Services Rules or under the conditions of his service; and

(2) that in any case rule 7.2 of the Punjab Civil Services Rules was not applicable to the case of interim suspension pending a departmental enquiry. The petitioner was consequently, entitled to full salarly and allowances during the said suspension.

This petition came up before the Motion Bench consisting of Mehar Singh and R. P. Khosla, JJ., on 11th of August; 1965; when notice was issued to the State of Punjab and it was further directed that this petition be heard by a Division Bench at a very early date. After notice the same came up for hearing on 14th February, 1966, before Dua and Narula; JJ.; who were of the opinion that the point raised in the petition was of considerable importance and was likely to arise very frequently. They accordingly thought it desirable that the same be decided more authoritative by a larger Bench. That is how the matter has been placed before us.

The first question for decision is whether the Government had a right to suspend the petitioner during the departmental enquiry pending against him.

It was strenuously contended by the learned counsel for the petitioner that the Government had no such power given to it under the Punjab Civil Services Rules. Such a power, according to the learned counsel, must, therefore, then be conferred on it under the conditions of service of that particular employee. If the same is not given there, the Government has no jurisdiction to suspend that employee pending the said enquiry. Reliance for this submission was placed by him mainly on two Supreme Court decisions in

Management of Hotel Imperial, New Delhi v. *Hotel Workers' Union* (1), and *T. Cajee* v. *U. Jormanik Siem* (2).

It was conceded by the learned counsel for the State that there was no specific rule in the Punjab Civil Services Rules empowering the Government to suspend its employee during the course of a departmental enquiry against him. It was further stated that no such power was given to the Government even in the conditions of service of the petitioner. His submission, however, was that no such power need be given either in the Civil Services Rules or in the conditions of service, because this right was inherent in the Government who was the employer of the petitioner, and it was so decided by the Supreme Court in *R. P. Kapur* v. *Union of India and another* (3).

I have gone through the three Supreme Court decisions referred to above. It is significant to mention that in all of them, Wanchoo, J., had prepared the judgment on behalf of the Court. In *R. P. Kapur's case* he has referred to the earlier two authorities and then observed thus —

> "Before we investigate what rights a member of the former Secretary of State's Services had with respect to suspension, whether as a punishment or pending a departmental enquiry or pending criminal proceedings, we must consider what rights the Government had in the matter of suspension of one kind or the other. The general law on the subject of suspension has been laid down by this Court in two cases, namely, *Management of Hotel Imperial New Delhi* v. *Hotel Workers Union* (1), and *T. Cajee* v. *U. Jormanik Siem* (2). These two "cases lay down that it is well settled that under the ordinary law of master and servant the power to suspend the servant without pay could not be implied as a term in an ordinary contract of service between the master and the servant, but must arise either from an express term in the contract itself, or a statutory provision governing such contract. It was further held that an order of interim suspension would be passed against an employee while enquiry was pending against his conduct even though there

(1) A.I.R. 1959 S.C. 1342=(1960)1 S.C. 476.
(2) A.I.R. 1961 S.C. 276=(1961)1 S.C.R. 750.
(3) A.I.R. 1964 S.C. 787.

was no specific provision to that effect in his terms of appointment or in the rules. But in such a case he would be entitled to his remuneration for the period of his interim suspension if there is no statute or rule existing under which it could be withheld.

The general principle therefore is that an employer can suspend an employee pending an enquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his full remuneration for the period of his interim suspension; on the other hand if there is a term in this respect in the contract or there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles in our opinion apply with equal force in a case where the Government "is the employer and a public servant is the employee with this modification that in view of the peculiar structural hierarchy of Government, the employer in the case of government, must be held to be the authority which has the power to appoint a public servant. On general principles therefore the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. This general principle is illustrated by the provision in section 16 of the General Clauses Act, No. X of 1897, which lays down that where any Central Act or Regulation gives power of appointment that includes the power to suspend or dismiss unless a different intention appears. Though this provision does not directly apply in the present case, it is in consonance with the general law of master and servant. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled

to his full emoluments during the period of suspension. This suspension must be distinguished from suspension as a punishment which is a different matter altogether depending upon the rules in that behalf. On general principles therefore the Government, like any other employer, would have a right to suspend a public "servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings, this may be called interim suspension. Or the Government may proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will be suspension as a penalty. These general principles will apply to all public servants but they will naturally be subject to the provisions of Art. 314 and this bring us to an investigation of what was the right of a member of the former Secretary of State's Services in the matter of suspension, whether as a penalty or otherwise."

A bare reading of these observations leaves no manner of doubt in my mind that the learned Judge has clearly laid down that the Government, like any ordinary employer, could pass an order of interim suspension against its employee while a departmental enquiry was pending against him, even though there was no specific provision to that effect either in the terms of appointment of that employee or there was no statutory provision in any law or rule in that regard. But what amount should be paid to that employee during such suspension is another matter and would be dealt with in the second question that arises for determination in the instant case.

Dealing with the earlier two decisions, the learned Judge held that all that they had laid down was that an employer could not suspend his servant *without pay* (underlining is mine italicised unless there was an express term in the contract of his service or there was a statutory provision to that effect governing such contract. Such a power could not be implied as a term in the ordinary contract of service. It was further laid down in these authorities that the employer could pass an order of interim suspension against his employee during the course of an enquiry which was pending against his conduct, even though no such power was given to him either in the terms of appointment of the employee or in the rules, but in such a case the employee will be entitled to his

remuneration for the period of suspension, unless there was any statute or rule prohibiting such a payment. According to the learned Judge, the general principle is that an employer can suspend his employee pending an enquiry into his conduct and the only question for determination in such a case would be as to what payment he would be entitled to during such suspension. This general principle, according to the learned Judge, equally applied in a case where the Government is the employer and the public servant is the employee. This suspension however, is distinct from suspension as a punishment, which is a different matter and depends upon the rules in that behalf. According to this authority, the Government can suspend any public servant pending departmental enquiry or pending criminal proceedings; such a suspension is called interim suspension. Or else, the Government can also hold a departmental enquiry and after an employee has been found to be guilty, order his suspension as a punishment if the rules so permit. This suspension would be as a measure of penalty.

I may also refer to another Supreme Court decision in *S. Partap Singh* v. *State of Punjab* (4), where in the concluding portion of paragraph 55 of the judgment, it was observed by *Raghubar Dayal, J.* that an order of suspension could be passed by the Government against its employee pending departmental enquiry against him, if on getting a complaint of misconduct, it considered that the alleged charge did not appear to be groundless, that it required enquiry and that it was necessary to suspend the government servant pending enquiry.

It may be mentioned that the learned counsel for the petitioner also submitted that when there were rules like 7.5 and 7.6 in existence empowering the Government to order suspension in certain contingencies, the interim suspension during departmental enquiry could not be ordered by invoking the inherent jurisdiction of the Government.

There is no weight in this argument. The Supreme Court in *S. Partap Singh's case, supra,* in paragraph 58 of the judgment, held that rules 7.5 and 7.6 did not invest the Government with the power of suspension, but only provided either for certain periods during the Government servant's service to be deemed to be periods during which he was under suspension or during which he be placed under

(4) A.I.R. 1964 S.C. 72.

suspension in view of the various exigencies mentioned in these rules.

In view of what has been said above, the first question has to be answered in the affirmative and the same, if I may say so, is not even open to any argument. There is, thus, no force in the submissions made by the learned counsel for the petitioner on this point and I would, consequently, hold that the Government was perfectly within its jurisdiction to suspend the petitioner pending the departmental enquiry against him.

The second and the only other question to be decided is whether the petitioner was entitled to his full salary and allowances during the period of this suspension or the Government had rightly decided that he should only be allowed subsistence allowance admissible to him under rule 7.2 of the Punjab Civil Services Rules, Volume I, Part I.

With regard to this question, it has been ruled by the Supreme Court in *R. P. Kapur's case* that during interim suspension the amount that has to be paid to the Government employee would depend on whether there is any rule os statute in that behalf. If there is one, then the payment would be made in accordance therewith. On the other hand, if there is no such provision in the rule or the statute the public servant would get his full salary and allowances during the period of suspension.

Learned counsel, however, contended that the Government had no right either under the Punjab Civil Services Rules or the conditions of his service to suspend the petitioner pending a departmental enquiry. The absence of such a power as an express term either in the contract of service or the statutory rules would only mean that the Government, like any other master, would have an inherent power to suspend its employees only in the sense that the employees would be prohibited from working, but would have to be paid full salary and allowances during the period of their suspension pending enquiry. Such interim suspension, if ordered, did not invest the Government with any further right to cut down the remuneration payable to its employees. It would be valid only subject to the petitioner being paid his full remuneration.

There is no force in this contention. In *R. P. Kapur's* case it has been explicitly laid down, while dealing with the two earlier decisions, that an order of interim suspension could be passed against an

employee while enquiry was pending into his conduct even though there was no specific provision to that effect in his terms of appointment or the rules. This was obviously in view of the inherent powers in the employer in this regard. But in such a case the employee would be entitled to his remuneration for the period of his interim suspension. If there was no statute or rule existing under which it could be withheld. In other words, if there was a rule or statute under which the employees remuneration could be withheld, then he would be governed by that rule and would be paid in accordance therewith. To put it differently, according to the Supreme Court, an employer has an inherent right to suspend his employee pending enquiry into his conduct. During the period of suspension he would be paid his full salary and allowances, but this payment was subject to a rule or statute, if any, in that respect. That is to say, if there was one existing, then the payment would be made according to that. It is, therefore, not necessary, as argued by the learned counsel, that if the Government was suspending the petitioner pending an enquiry in exercise of its inherent powers, then he has to be paid his full salary and allowances during that period, because the Government in such circumstances had no power to withhold the same or cut down the remuneration payable to him. Learned counsel is not right when he says that the interim suspension would be valid only if the petitioner was paid his full remuneration. If there was a rule or statute regulating the payment of remuneration during the period of interim suspension, then the payment according to that would not in any way, according to the Supreme Court decision referred to above, invalidate the suspension ordered in exercise of the inherent right of the employer.

Learned counsel for the petitioner then submitted that in *R. P. Kapur's case*, the Supreme Court had laid down that the power to suspend and fix the emoluments during such suspension must simultaneously exist as an express provision in the service contract or the rules in order to invest the Government with a right to reduce the employee's emoluments, This could not be implied as a term in an ordinary contract of service. In the case of the petitioner both these elements were non-existent. Learned counsel referred to the following observations of the Supreme Court mentioned in paragraph 11 of the judgment in this behalf—

> "The general principle, therefore, is that an employer can suspend an employee pending an enquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such

suspension. If there is no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his full remuneration for the period of his interim suspension;.....".

There is no merit in this submission as well. The argument of the learned counsel, if I may say so, is based on a misunderstanding of the Supreme Court decision. What is laid down there is that according to the general principle an employer can suspend an employee pending enquiry into his conduct. This is a right inherent in an employer. The only question then arises as to what payment should be made to the employee during such a suspension. While explaining this point, the Supreme Court goes on to say that if the contract of service did not contain a term with regard to suspension and payment during such suspension, or if there was no provision in any statute or rule regarding payment during such suspension, then the employee was entitled to receive his full remuneration. It is pertinent to mention that when these observations were made, the Supreme Court was dealing with the point as to what payment had to be made during the period of interim suspension, the inherent right of an employer to suspend his employee pending enquiry into his conduct having already been settled by the Court in the earlier sentence. In the contract of service, according to the Supreme Court, there must be a specific term relating to suspension and payment during such suspension, while in the statute or rule, there must be a provision with regard to only the payment during suspension. This would be further clear from the observations of the Court in the sentence that follows. There it is stated that if there was a term in that respect (i.e. suspension and payment during such suspension) in the contract of service or there was a provision in the statute or the rules framed thereunder with regard to the *scale of payment during suspension*, the payment to the employee would be made in accordance therewith. Later on, again, after having held that the Government has an inherent right to suspend its employees during departmental enquiry, the Supreme Court has observed that during such suspension the amount to be paid to such public servant would depend upon the provisions of the statute or the rules in that connection. If there was such a provision, the payment during suspension would be in accordance therewith. If, on the other hand, there was no such provision, the public servant would be entitled to his full emoluments. Thus, according to the Supreme Court, it was only in a service contract that there

had to be an express provision with regard to the power to suspend and fix the emoluments during such suspension. In the rules, however, it was enough if only the scale of payment during interim suspension was mentioned. The reason for this distinction seems to be that a written contract of service was supposed to be self-contained and to include all the conditions of service. It was not considered sufficient if only the scale of payment during interim suspension was mentioned therein. The power to suspend the employee had to precede the provision regarding the payment to him during such suspension. It was presumably on this ground that that power was also thought necessary to be introduced in the contract of service.

Now the question is whether rule 7.2 of the Punjab Civil Services Rule, Volume I, Part I, on which reliance has been placed by the Government, was applicable to the case of interim suspension pending departmental enquiry. This rule runs thus :—

"7.2 (1) A Government servant under suspension shall be entitled to the following payments, namely :—

"(i) In the case of a Warrant Officer in Civil employ, who is liable to revert to military duty the pay and allowances to which he would have been entitled had he been suspended while in military employment.

(ii) in the case of any other Government servant—

(a) a subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn if he had been on leave on half average pay or on half pay, and in addition dearness allowance, if admissible, on the basis of such leave salary :

Provided that where the period of suspension exceeds twelve months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first twelve months as follows :—

(i) the amount of subsistence allowance may be increased by a suitable amount not exceeding 50 per cent of the subsistence allowance admissible during the period of the

first twelve months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant ;

(ii) the amount of subsistence allowance may be reduced by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first twelve months, if "in the opinion of the said authority, the period of suspension has been prolonged due to reasons to be recorded in writing, directly attributable to the Government servant;

(iii) the rate of dearness allowance will be based on the increased, or as the case may be; the decreased amount of subsistence allowance admissible under clauses (i) and (ii) above ;

(b) any other compensatory allowance admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension :

Provided that the Government servant shall not be entitled to the compensatory allowances unless the said authority is satisfied that the Government servant continues to meet the expenditure for which they are granted,

(2) No payment under sub-rule (1) shall be made unless the Government employee furnishes a certificate that he is not engaged in any other employment business profession, or vocation ;

Provided that in the case of a Government servant dismissed, removed or complusorily retired from service who is deemed to have been placed or to continue to be under suspension from the date of such dismissal or removal compulsory retirement and who fails to produce such a certificate for any period or periods during which he is deemed to be placed or to continue to be under suspension, he shall be entitled to the subsistence allowance and "other allowances equal to the amount by which his earnings during such period or periods, as the case may

be fall short of the amount of subsistence allowance and other allowances that would otherwise be admissible to him, where the subsistence and other allowances admissible to him are equal to or less than the amount earned by him, nothing in this proviso shall apply to him."

A plain reading of this rule would show that its applicability is not restricted to any particular type of suspension. The language employed in this rule is quite clear and unambiguous. It is not said there that it applies to suspension ordered as a measure of punishment only. There is no reason whatsoever why a restricted meaning should be given to the word 'suspension' employed in this rule. It, therefore, follows that this rule applies to both types of suspensions, namely, interim as well as those ordered by way of punishment. The proviso to sub-rule (1) of this rule further makes it clear that this rule is not restricted to suspensions as a measure of penalty. Therein it is mentioned that where the period of suspension exceeded 12 months, the authority which made the order of suspension would be competent to increase or decrease the subsistence allowance for any period subsequent to the period of first twelve months if, in the opinion of the said authority, the period of suspension had been prolonged for reasons not directly attributable to the Government servant or directly attributable to him, as the case may be. If this rule applied only to suspension as a measure of punishment, then there was no question of prolonging the period of suspension, because a specific period is fixed in the order of suspension when it is passed as a measure of penalty. It is only in the case of interim suspension that the period could be prolonged either due to the Government servant himself or for reasons for which he could not be responsible. Moreover, according to rule 7.3 which deals with 'allowances on re-instatement', when a Government servant is re-instated after he has been suspended, the authority competent to reinstate him has to take a decision, while passing the order of re-instatement, as to what pay and allowances have to be paid to him for the period of his absence from duty. If rule 7.2 applied to the case of a Government servant who was suspended as a measure of penalty only, then there was no occasion to consider as to what pay and allowances should be given to him during the period of his suspension, while reinstating him, because when the order of suspension as a measure of punishment is passed, then the Government servant is not entitled to receive any pay and allowances for that period except the subsistence allowance prescribed in

rule 7.2. This also showed that the word 'suspension' in rule 7.2 covered 'interim suspension' as well. This apart, rule 53 of the Fundamental Rules is almost similar to rule 7.2. While interpreting that rule, the Supreme Court in *R. P. Kapur's case, supra,* has held in paragraph 13 of the judgment that when rule 53 of the Fundamental Rules speaks of 'suspension', it speaks of it in general terms. It applies to all kinds of suspension whether as a penalty or otherwise.

Learned counsel for the petitioner submitted that rule 7.2 applied only to the case of a Government servant who had been suspended as a measure of punishment and not on account of a departmental enquiry pending against him. In the said rule, according to the learned counsel, it was not specifically mentioned that it applied to the case of interim suspension. Moreover, this rule found place in Chapter VII which deals with 'Dismissal, removal and suspension' which were all penalties inflicted on a Government servant after enquiry. The 'Suspension' referred to in this rule, therefore, means suspension as a measure of punishment provided for in rule 4(v) of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 (Appendix 24 in the Punjab Civil Services Rules, Volume I, Part II—Appendices and Forms). According to the learned counsel the same words occurring in the rules must be given the same meaning, unless a different intention appeared from the context.

There is no force in this contention. It is true that in the said rule, it was not mentioned that it applied to the case of 'interim suspension'. But it is note-worthy that in the said rule, it was also not mentioned that it was applicable to 'suspension as a measure of punishment'. Only the word 'suspension' has been employed in this rule and this word has been used there in a broad sense covering both types of suspensions, namely, interim as well as those ordered by way of penalty. As I have already said above, the language used in this rule is quite clear and unambiguous and there is no reason why the word 'suspension' should be given a restricted meaning and this rule made applicable only to cases of suspension as a measure of punishment. The mere fact that this rule occurs in Chapter VII which deals with 'Dismissal, Removal and suspension' which are all penalties enumerated in rule 4(v) of the Punjab Civil Services (Punishment and Appeal) Rules, does not mean that the suspension referred to in the said rule cannot apply to cases of interim suspension. Rules 7.5 and 7.6 which do not deal with suspension by way of penalty but relate to interim suspension during the pendency of

criminal proceedings, or proceedings for arrest for debt, or during detention under a law providing for preventive detention, also find place in this very chapter. The heading of the chapter is also not in any way inconsistent with the interpretation that rule 7.2 covers interim suspension during departmental enquiry. Moreover, if the wording of the rule is plain and not capable of two meanings, it is wholly unnecessary to refer to the heading of the chapter in which the rule finds place. The headings prefixed to sections or sets of sections in some modern statutes are regarded as preambles to those sections. They cannot control the plain words of the statute, but they may explain ambiguous words. (See in this connection Maxwell on Interpretation of Statutes, 10th Edition at page 50). The principle that the same word occurring in the same statute should be given the same meaning, unless a different intention appears from the context has again no application to the instant case, where, as I have already held above, the meaning of the rule is quite clear and there is no doubt regarding the interpretation of the words employed therein. It is also pertinent to mention that the heading of rule 7.2 is 'Allowances during the period of suspension'. There is nothing in this heading also which suggests that the word 'suspension' in this rule should be restricted only to suspension ordered as a measure of penalty.

Learned counsel then contended that if rule 7.2 covered all types of suspension, there was no necessity for framing rules 7.5 and 7.6 which dealt with 'suspension during the pendency of criminal proceedings or proceedings for arrest for debt, or during detention under a law providing for preventive detention'.

Rules 7.5 and 7.6 are as follows :—

> "7.5 A servant of Government against whom proceedings have been taken either for his arrest for debt or on a criminal charge or who is detained under any law providing for preventive detention should be considered as under suspension for any periods during which he is detained in custody or is undergoing imprisonment, and not allowed to draw any pay and allowances (other than any subsistence allowance that may be granted in accordance with the principles laid down in rule 7.2) for such periods until the final termination of the proceedings taken against him or until he is released from detention and allowed to rejoin duty, as the case may be. An adjustment of his

allowances for such periods should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame or (if the proceedings taken against him were for his arrest for debt), of its being proved that the officer's liability arose from circumstances beyond his control or the detention being held by the competent authority to be unjustified.

7.6. A servant of Government against whom a criminal charge or a proceeding for arrest for debt is depending should also be placed under suspension by the issue of specific orders to this effect during periods when he is not actually detained in custody or imprisoned (e.g., while released on bail) if the charge made or proceeding taken against him is connected with his position as a Government servant or is likely to embarrass him in the discharge of his duties as such or involves moral turpitude. In regard to his pay and allowances, the provisions of rule 7.5 shall apply."

A reading of these rules would show that the first rule provided that if against a Government servant proceedings have been taken for his arrest either for some debt or on a criminal charge or who has been detained under any law providing for preventive detention, then he should be considered as under suspension during the period he is detained in custody or is undergoing imprisonment, that is to say there will be an automatic suspension in his case. The rule further provides that such a Government servant will not draw his regular salary and allowances, but would be given a subsistence allowance in accordance with rule 7.2 for that period. According to the second rule, if there is a Government employee against whom a criminal charge or a proceeding for arrest for debt is pending, he should be placed under suspension by the issue of specific order during the periods when he is not actually detained in custody or imprisoned, provided the charge made or the proceeding taken against him is connected with his position as a Government servant or is likely to embarrass him in the discharge of his duties as a Government employee or involves moral turpitude. The rule also provides that during this period he is authorised to get pay and allowances as mentioned in the first rule. In other words, rule 7.2 would be applicable to his case as well. I have already held that rule 7.2 applies to interim suspension pending departmental enquiry.

These two rules do not relate to interim suspension during the departmental enquiry, but they provide for different contingencies as referred to by me above and that is why these rules had to be framed in spite of the existence of rule 7.2.

It was then argued that in case rule 7.2 was to apply both to interim suspension and suspension by way of penalty, it would mean that the person who after enquiry had been found guilty would be treated at par with the one against whom enquiry was still pending. This, according to the learned counsel, obviously could not be the intention of the framers.

There is no merit in this argument. When suspension is imposed by way of penalty, the employee is only given subsistence allowance mentioned in rule 7.2. On the other hand, when suspension is ordered during departmental enquiry, then according to rule 7.3, the authority competent to order his reinstatement had to consider and make a specific order regarding the pay and allowances to be paid to him for the period of his absence from duty. If he finds that the employee had been fully exonerated or that his suspension was wholly unjustified, then the Government servant would be given full pay and allowances to which he was entitled. This clearly shows that the Government servant, who after enquiry is found guilty, is not treated at par with the one against whom enquiry is pending and who later on is exonerated.

The next contention raised by the learned counsel for the petitioner was that the provisions of sub-rule (2) of rule 7.2 also showed that this rule applied to the case of suspension by way of penalty. Under that sub-rule, according to the learned counsel, the Government employee under suspension had to furnish a certificate to the effect that he was not engaged in any other employment, business, profession or vocation, before he was paid subsistence allowance under sub-rule (1). It was only those Government servants who were suspended as a measure of punishment who could take employment during the period of suspension, because in their case, the contract of service had temporarily come to an end, in the case of interim suspension, on the other hand, the contract of service was subsisting and the Government employee was considered to be in Government service and he could not take up any employment during that period.

This argument is also devoid of any merit. It is wrong to contend that when a Government servant is suspended as a measure of punishment, his contract of service temporarily comes to an end and during that period he is authorised under the law to take up service wherever he likes. It cannot be forgotten that during that suspension period also, he goes on getting subsistence allowance. If the contract of his service had come to an end, then the Government was not under any obligation to pay him anything and he could then work wherever he liked. Since he was being paid subsistence allowance even though he was doing nothing for the Government, it clearly showed that his contract had not ended even temporarily and the same was subsisting. Sub-rule (2) of rule 7.2, was applicable in the case of both types of Government servants, namely, those who were suspended as a measure of punishment or during the pendency of departmental enquiry. They will have to furnish certificates that they were not engaged in any other employment, business, profession or vocation before they could claim the subsistence allowance under sub-rule (1) of this rule. If any of them did earn some amount by working anywhere else, that had to be adjusted towards the subsistence allowance payable under this rule.

The next submission of the learned counsel for the petitioner was that since there was no specific rule whereby the Government had reserved to itself the power of suspending a Government employee pending departmental enquiry against him, it was therefore that it had not framed any rule regulating the payment of compensation during the period of such suspension.

This is begging the question. It assumes that rule 7.2 applies only to suspension by way of punishment. If, as I have already held above, this rule is applicable to both types of suspension, then one is merely to find out as to whether the Government had the power to suspend its employee pending departmental enquiry into his conduct. For that no definite rule was needed and it has been held by the Supreme Court in *R. P. Kapur's case, supra*, that such a power inheres in the Government. It follows then, that if the Government had the inherent power to suspend its employees during departmental enquiry, it had to frame a rule for regulating the payment of salary and allowances to them during that period. It was for that reason that rule 7.2 was framed.

Lastly, it was contended that since there was no specific rule or term in the conditions of service empowering the Government

to suspend its employees pending departmental enquiry and no definite rule or term withholding the payment of full salary and allowances during such a suspension period, the court should not deprive the petitioner of his full salary and allowances by taking recourse to rule 7.2.

There is no force in this contention. The Supreme Court has held that it is the inherent right of the Government to suspend its employees pending departmental enquiry into their conduct. I have also held that rule 7.2 is applicable to the cases of interim suspension pending departmental enquiry and according to this rule, only subsistence allowance according to the scale mentioned therein had to be paid to such employees. All the Government servants are bound by this rule and it is by virtue of this rule that full salary and allowances are not payable to the Government employee during the suspension period. There is, thus, proper legal basis for withholding full salary and allowances of such Government servants.

Before parting with the case, I may refer to a Bench decision of this Court between the same parties when the petitioner had filed the earlier writ petition, C.W. No. 1646 of 1964, praying that a mandamus be issued to the State of Punjab directing it to pay full salary and allowances not only for the period between his dismissal and reinstatement, but even for the period during which he had remained suspended prior to the order of his dismissal on 6th October, 1961. This petition was allowed by Shamsher Bahadur and Gurdev Singh, JJ. and during the course of that decision, they observed as under :—

> "The Punjab Civil Services Rules do not contain any rule enabling the Government to suspend its employee pending departmental enquiry against him, yet the Government like any other employer has an inherent right to suspend a public servant pending departmental enquiry or criminal proceedings against him. This is what is called "interim suspension", and it is quite distinct from suspension which is inflicted as penalty or punishment.
>
> Held further, that provisions contained in rule 7.2 of the Punjab Civil Services Rules, Volume I, Part I, apply even to cases of interim suspension pending a departmental enquiry or criminal prosecutions. The rule governs subsistence allowance that is to be paid so long as the interim suspension lasts."

I respectfully agree with the above-mentioned observations.

I may also state that the impugned order in the present writ petition had been made by the Government before the earlier petition was filed. It is strange that this order was not challenged in that petition for reasons best known to the petitioner.

It is also noteworthy that the impugned order was passed on 20th of September, 1963 and the same was published in the Punjab Gazette on September 27, 1963. The present writ petition was filed in this Court on 30th of July, 1965, i.e., after about 22 months. No explanation for this inordinate delay has been given in the writ petition. This is an additional ground for not interfering with the impugned order in these proceedings.

In view of what I have said above, this petition fails and is dismissed. There will, however, be no order as to cost.

INDER DEV DUA, J.—I agree.

R. S. NARULA, J.—I also agree.

B. R. T.

FULL BENCH

Before Inder Dev Dua, Prem Chand Pandit and R. S. Narula, JJ.

M/S OM PARKASH-RAJINDER KUMAR,— *Petitioner*

versus

K. K. OPAL,—*Respondent*

Civil Writ No. 2306 of 1964.

October 10, 1966

Punjab General Sales Tax Act (XLVI of 1948)—S. 10(7)—Penalty—Whether can be imposed before the end of the year—S. 11—Assessment on the basis of quarterly returns submitted by the dealer—Whether can be made before the expiry of the relevant financial year.