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not been prepared, no excise duty would have been charged. This excise duty was being charged, because originally (before the 26th of January 1950), it could be charged under the Punjab Excise Act. Item 37 of the Schedule attached to the East Punjab General Sales Tax Act is—

> "All goods on which duty is or may be levied under the Punjab Excise Act, 1914, or the Opium Act, 1878."

Such goods are exempted from sales tax. The excise duty, which is being charged by the Punjab State by virtue of Article 277, is clearly a duty which is being levied under the Punjab Excise Act of 1914, even though item (c) of sub-section (6) of section 3 was omitted by the Adaptation of Laws Order, 1950. Article 277 was intended to provide continuity in the fiscal law of the State, and the power given by it was the power derived under the Punjab Excise Act. Therefore, it is clear that the duty, which is being levied on the finished goods prepared by the assessee, is being levied under the Punjab Excise Act. That being so, the articles prepared by the assessee are exempt from the sales tax. We answer the reference accordingly. There will be no order as to costs.

D. K. MAHAJAN, J.—I agree.

R. S.

SUPREME COURT

Before P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah, K. C. Das Gupta and J. C. Shah, JJ.

BHAGAT SINGH,—*Appellant.*

versus

THE STATE OF PUNJAB,—*Respondent*

Civil Appeal No. 349 of 1957

Government of India Act (1935)—Sections 240(3) and 243—Applicability of to members of the subordinate ranks

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of police force—Police Act (V of 1861)—Sections 29 and 35—Whether bar departmental inquiry where prosecution under the Act possible.

Held, that section 243 of the Government of India Act, 1935, was a special provision with regard to subordinate ranks of police forces in India whose conditions of service are governed by or under the Acts relating to police forces and section 240(3) of the Government of India Act can have no application to them. The *non-obstante* clause of section 243 makes it quite clear that so far as the subordinate ranks of police forces in India are concerned, section 243 will apply and not the earlier provisions including section 240(3).

Held, that sections 29 and 35 of the Police Act, 1861, nowhere exclude departmental enquiry. All that these sections lay down is that where an offence punishable under the Police Act is committed by a police officer above the rank of a constable and is to be tried by a court of law, it has to go before a First Class Magistrate. That, however, does not mean that no departmental enquiry can be held with respect to a matter where it is also possible to prosecute a police officer under the Police Act.

Appeal by Special Leave from the Judgment and Decree, dated the 29th November, 1954, of the Punjab High Court in Regular Second Appeal No. 891 of 1951.

For the Appellant : M/s. Hardayal Hardy and N. N. Keswani, Advocates.

For the Respondent : M. N. S. Bindra, Senior Advocate (Mr. D. Gupta, Advocate, with him).

JUDGMENT

The following Judgment of the Court was delivered by—

WANCHOO, J.—This is an appeal by special leave against the judgment of the Punjab High Court in a service matter. The brief facts necessary for present purposes are that the appellant was appointed as a foot-constable in 1931 in the Punjab Police and was dismissed on January 25.

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1944. Shortly before, he was acting as an Assistant Sub-Inspector and actually working as a Police Censor. The charge against him was that while he was working as Police Censor, he detained certain letters illegally and had copies and photographs made of them and later used these copies and photographs for blackmail. He was consequently reverted to his substantive post of head constable on January 14, 1944. Thereafter on January 21, 1944, an enquiry was started against him by the Superintendent of Police and he was eventually dismissed. He went in appeal to the Deputy Inspector-General of Police, which was dismissed. He then went in revision to the Inspector-General of Police, which also failed. Finally he made several representations and memorials to the Punjab Government but without avail. Consequently the present suit was filed by the appellant in February, 1949. The plaint as originally filed, after narrating the facts relating to the appellant's service, merely stated that the charge of misconduct was brought against the appellant on account of enmity and that the departmental enquiry made by the Superintendent of Police was arbitrary and not according to law, rules and regulations prescribed for the same. Besides this vague general allegation, the only specific grievance made out by the appellant in the plaint was that the Superintendent of Police had dismissed him without recording his defence evidence and without giving him an opportunity to produce the same. The appellant amended the plaint later and added one more grievance, namely, that he had been appointed by the Deputy Inspector-General of Police and could only have been dismissed by him and not by the Superintendent of Police. As to the Departmental enquiry, certain further defects therein were pointed out besides the allegation already made that his defence

had not been taken and that he had not been given an opportunity to produce it. Those further defects were (i) that he was not permitted to engage counsel, (ii) that he was not allowed full opportunity to cross-examine the prosecution witnesses, and (iii) that he was not asked by the enquiry officer to state what he had to say in answer to the charge against him and was not permitted to file a written-statement explaining the alleged incriminating circumstances against him.

The suit was opposed on behalf of the Punjab Government and among others their main defence was that the enquiry was in accordance with the Regulations and was not arbitrary. It was also denied that no opportunity had been given to the appellant to lead defence evidence or to cross-examine prosecution witnesses or to make his own statement in answer to the charge. It was admitted that permission was refused to engage a counsel ; but it was finally averred that taking the enquiry as a whole there was no such defect in its conduct as to invalidate it or call for interference by the courts.

Three issues, all of a general nature, were framed by the trial court, namely—

(1) Whether the plaintiff's dismissal is void, illegal, inoperative and wrongful and what is its effect ?

(2) Whether the Civil Courts have jurisdiction to entertain the suit or to go into the question of the validity of the departmental enquiry ?

(3) Whether the suit for declaration lies and is competent and why ?

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It is unfortunate that the specific points raised by the appellant whatever they were were not made the subject-matter of specific issues. However, the trial court came to the conclusion that the case of the appellant was governed by section 240(3) of the Government of India Act, 1935; and it was reinforced in this conclusion by the Police Regulations which, according to it, provided for the same safeguards as were contained in section 240 (3). It, therefore, held that as section 240(3) had not been complied with, the dismissal was void and illegal. As to the other two issues relating to the jurisdiction of civil courts they were decided in favour of the appellant.

There was an appeal to the District Judge by the Punjab Government. The District Judge agreed with the conclusions of the trial court on the applicability of section 240(3) to the case of the appellant and further referred to an amendment in the Police Regulations which required that before an order of dismissal or reduction in rank is made, the officer to be punished shall be produced before the officer empowered to punish him and shall be informed of the charges proved against him and called upon to show cause why an order of dismissal or reduction in rank should not be passed. The District Judge was conscious that this amendment in the Regulations was made in September, 1946, long after the dismissal of the appellant and, therefore, would not apply to the appellant's case; but he overruled this contention on the ground that the rule was merely declaratory of the law and only removed the ambiguity that might have arisen because of section 243 of the Government of India Act. He, therefore, dismissed the appeal.

Then followed a second appeal by the Punjab Government to the High Court. The High Court

held that section 240(3) did not apply to the case of the appellant and that section 243 was the governing section. In consequence the High Court further held that the appellant was not entitled to the protection of section 240(3) and as the amendment to the Police Regulations which brought in the substance of section 240(3) therein was made after the dismissal of the appellant, he could not take advantage of it. As to the enquiry, the High Court held that though there might have been minor procedural defects in the enquiry it was on the whole substantially in acordance with the Regulations and principles of natural justice and could not, therefore, be held to be invalid. The High Court pointed out that there was no serious contravention of the Regulations and the witnesses who had appeared were cross-examined by the appellant who was also called upon to produce his defence within 48 hours. He, however, did not choose to do so and wanted a postponement which was refused and therafter the Superintendent of Police proceeded to dismiss him.

Learned counsel for the appellant challenges the correctness of the view taken by the High Court and three points have been urged on his behalf before us, namely, (1) section 240(3) of the Government of India Act applied to police officers of subordinate rank and there was nothing in section 243 which took away from such officers the protection of section 240(2); (2) Even if the Police Regulations alone applied, there was such violation of the relevant regulations as to vitiate the enquiry proceedings ; and (3) The Superintendent of Police could not hold a deparemental enquiry as a criminal offence had been committed, and reliance in this connection was placed on sections 29 and 35 of the Police Act No. V of 1861.

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Section 243 of the Government of India Act appears in Chapter II of Part X dealing with 'Civil Services'. That Chapter begins with section 240 and sub-section (3) thereof provides that no member of a civil service or holding any civil post in India shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. Section 243, however, is in these terms:—

> "Notwithstanding anything in the foregoing provisions of this chapter, the conditions of service of the subordinate ranks of the various police forces in India shall be such as may be determined by or under the Act relating to those forces, respectively."

Obviously section 243 was a special provision with regard to subordinate ranks of police forces in India and it is not in dispute that the appellant belonged to the subordinate ranks. Therefore, according to section 243, the conditions of service of the subordinate ranks are governed by or under the Acts relating to police forces and section 240 (3) can have no application to them. The *non-obstante* clause of section 243 makes it clear that so far as the subordinate ranks of police forces in India are concerned, section 243 will apply and not the earier provisions including section 240(3). We are, therefore, of opinion that in view of the special provisions in section 243 relating to the subordinate ranks of police forces in India (to which the appellant undoubtedly belonged), section 240(3) would have no application. We may in this connection refer to the judgment of the Privy Council in *North-West Frontier Province* v. *Suraj Narain*

Anand (1), where it was held that the *non obstante* clause in section 243 excluded the operation of section 240(2) in the case of subordinate ranks of police forces in India and that conditions of service included the right of dismissal. That case dealt with section 240(2) but the same reasoning would in our opinion apply to section 240(3). As has already been pointed out by the learned District Judge, the substance of section 240(3) was brought into the Police Regulation in September, 1946, long after the appellant had been dismissed and would, therefore, not apply to the appellant. He would, therefore, not be entitled to the second notice under section 240(3) as explained in *I. M. Lall's case* by the Privy Council : (See *High Commissioner for India and High Commissioner for Pakistan* v. *I. M. Lall* (2)). Nor was such notice necessary under the Police Regulations as they existed at the time of the appellant's dismissal. The view taken by the High Court under the circumstances is correct.

Re. (2).

So far as violation of the material provisions of rule 16.24 of the Police Regulations is concerned, we find that only three specific allegations material for the purpose were set out by the appellant, namely, (i) that he was not given the chance to defend himself, (ii) that he was not allowed to cross-examine the prosecution witnesses, and (iii) that he was not allowed to explain the circumstances appearing against him and was not allowed to file a written statement. It is enough in this connection to say that he was certainly given a chance to produce defence but did not himself avail of it. It also appears as found by the High Court that the witnesses were cross-examined by the appellant at length and on the whole there is nothing to show that he was not

(1) 1948 F.C.R. 103.
(2) 1948 F.C.R. 44.

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allowed to explain the circumstances appearing against him. We, therefore, agree with the High Court that there is no such serious contravention of the Regulations as to call for interference by the Courts.

Rs. (3).

Reliance in this connection is placed on sections 29 and 35 of the Police Act. Section 29 provides for penalties for neglect of duty, etc., by police officers and lays down the extent of punishment on conviction by a magistrate. Section 35 defines what magistrate can try a charge against a police officer above the rank of a constable under the Police Act and such a magistrate has to be a First Class Magistrate. These sections nowhere exclude departmental enquiry. All that they lay down is that where an offence punishable under the Police Act is committed by a police officer above the rank of a constable and is to be tried by a court of law it has to go before a First Class Magistrate. That, however, does not mean that no departmental enquiry can be held with respect to a matter where it is also possible to prosecute a police officer under the Police Act. There is no force in this contention also and it is hereby rejected.

The appeal, therefore, fails and is hereby dismissed, but in the circumstances of this case we pass no order as to costs.

R. S.

SUPREME COURT

Before Sudhanshu Kumar Das, M. Hidayatullah and J. C. Shah.

THE COMMISSIONER OF INCOME-TAX, PUNJAB, ETC.,—*Appellant.*

versus

SHRI THAKAR DAS BHARGAVA,—*Respondent.*

1960

July, 28th

Civil Appeal No. 236 of 1955.

Income-tax Act (XI of 1922)—Sections 3 and 4—Advocate agreeing to defend a case provided the accused

or their relatives provide Rs. 40,000, for creating a charitable trust—Rs. 32,500, so provided—Whether professional income assessable to income-tax—Trust—How created—Whether any technical words necessary.

T.D.B., an advocate who had retired from active practice, agreed to defend the accused in a criminal case on condition that the accused or their relatives provided a sum of Rs. 40,000, to him for a public charitable trust. The accused and their relatives provided him a sum of Rs. 32,500, with which he created such a trust. The question arose whether the sum of Rs. 32,500, was his professional income assessable to income-tax.

Held, that from the facts found by the Tribunal the proper legal inference is that the sum of Rs. 32,500, paid to the assessee was his professional income at the time when it was paid and no trust or obligation in the nature of a trust was created at that time, and when the assessee created a trust by the trust deed of August 6, 1945, he applied part of his professional income as trust property. The amount of Rs. 32,500, received by the assessee, being his professional income, was taxable in his hands. If the accused persons had themselves resolved to create the trust in memory of the professional aid rendered to them by the appellant and had made him a trustee for the money so paid to him for that purpose, it could, perhaps, be argued that the money paid was earmarked for charity *ab initio* and was not assessable to income-tax.

Held, that a trust may be created by any language sufficient to show the intention and no technical words are necessary. A trust may even be created by the use of words which are primarily words of condition, but such words will constitute a trust only where the requisites of a trust are present, namely, where these are purposes independent of the donee to which the subject-matter of the gift is required to be applied and an obligation on the donee to satisfy those purposes.

The Commissioner of Income-tax, Punjab v. *Thakar Dass Bhargava* (1) reversed.

Appeal from the Judgment and Order, dated the 3rd August, 1953, of the Punjab High Court in Civil Reference No. 7 of 1952.

(1) I.L.R. 1954 Punjab 591.

For the Appellant : Mr. M. C. Setalvad, Attorney-General for India and Mr. K. N. Rajagopal Sastri, Senior Advocate (Mr. D. Gupta, Advocate, with them).

For the Respondent . Mr. N. C. Chatterjee, Senior Advocate (Mr. S. D. Sekhri, Advocate, with him).

JUDGMENT

The following Judgment of the Court was delivered by—

S. K. Dass, J.

S. K. DAS, J.—This is an appeal on a certificate of fitness granted under the provisions of sub-section 2 of section 66-A of the Indian Income-tax Act, 1922, by the High Court of Judicature for the State of Punjab then sitting at Simla. The certificate is dated December 28, 1953, and was granted on an application made by the Commissioner of Income-tax, Punjab, appellant herein. The relevant facts are shortly stated below.

For the assessment year 1946-47 one Pandit Thakurdas Bhargava, an advocate of Hissar and respondent before us, was assessed to income-tax on a total assessable income of Rs. 58,475 in the account year 1945-46. This sum included the amount of Rs. 32,500, stated to have been received by the respondent in July, 1945, for defending the accused persons in a case known as the Farrukhnagar case. The assessee claimed that the said amount of Rs. 32,500, was not a part of his professional income, because the amount was given to him in trust for charity. This claim of the assessee was not accepted by the Income-tax Officer, nor by the Appellant Assistant Commissioner who heard the appeal from the order of the Income-tax Officer. Both these officers held that the assessee

had received the amount of Rs. 32,500, as his professional income and the trust which the assessee later created by a deed of Trust, dated August 6, 1945, did not change the nature or character of the receipt as professional income of the assessee; they further held that the persons who paid the money to the assessee did not create any trust nor impose any obligation in the nature of a trust binding on the assessee, and in fact and law the trust was created by the assessee himself out of his professional income ; therefore, the amount attracted tax as soon as it was received by the assessee as his professional income, and its future destination or application was irrelevant for taxing purposes. From the order of the Appellate Assistant Commissioner a further appeal was carried to the Income-tax Appellate Tribunal, Delhi Branch. We shall presently state the facts which the Tribunal found, but its conclusion drawn from the facts found was expressed in the following words : "The income in this case did not at any stage arise to the assessee. Keeping in mind the express stipulation made by the assessee when he accepted the brief there was a voluntary trust created, which had to be and was subsequently reduced into writing after the money was subscribed. The payments received from the accused and other persons were received on behalf of the trust and not by the assessee in his capacity as an individual. In this view, we delete the sum of Rs. 32,500, from the assessment."

The appellant then moved the Tribunal for stating a case to the High Court on the question of law which arose out of the order of the Tribunal. The Tribunal was of the opinion that a question of law did arise out of its order, and this question is formulated in the following terms :

> "Whether the sum of Rs. 32,500 received by the assessee in the circumstances

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set out in the trust deed later executed by him on August 6, 1945, was his professional income taxable in his hands, or was it money received by him on behalf of a trust and not in his capacity as an individual."

It appears that in stating a case the Tribunal framed an additional question as to whether the trust was created at or before the payment of Rs. 32,500, but expressed the view that this additional question was implicit in the principal question formulated by it. A case was accordingly stated to the High Court under section 66 of the Indian Income-tax Act, and the High Court by its judgment, dated August 3, 1953, answered the question in favour of the assessee, holding that "the sum of Rs. 32,500, received by the assessee was not received by him as his professional income but was received on behalf of the trust and not in his capacity as individual". The appellant then moved the High Court and obtained the certificate of fitness referred to ealier in this judgment.

We shall presently state the facts found by the Tribunal in conection with the receipt of the sum of Rs. 32,500, by the assessee, from which the Tribunal drew its inference. But the question as framed by the Tribunal and answered by the High Court, was whether in the circumstances set out in the trust deed, dated August 6, 1945, the amount of Rs. 32,500, received by the assessee was professional income in his hand. It is, therefore, appropriate to refer first to the recitals in the trust deed. The respondent stated in the trust deed that he had "decreased" his legal practice for the last few years and had reserved his professional income accruing after June 1944 for payment of taxes and charity. He then said: "Accordingly, I have been acting on that. In the Farrukhnagar, district Gurgaon

case, Crown *versus* Chuttan Lal, etc., the relatives of the accused expressed a strong desire to get the case conducted by me during its trial. At last on their persistence and promise that they would provide me with Rs. 40,000, for charitable purposes and I would create a public charitable trust thereof I agreed to conduct the case. The case is now over. The accused and their relatives have given me Rs. 32,500, for charity and creating a trust. The said amount has been desposited in the Bank. If they pay any other amount that will also be included in that. Accordingly, I create this trust with the following conditions and with the said amount and any other amount which may be realised afterwards or included in the trust;" (then followed the name and objects of the trust, etc.) The Tribunal accepted as correct the statements of the respondent that he was at first unwilling to accept the brief in the Farrukhnagar case; he was then persuaded to accept it at the request of some members of the Bar and some influential local people on the undertsanding, as the respondent put it, that the accused persons of that case would provide Rs. 40,000, for a charitable trust which the respondent would create. Eventually, the sum of Rs. 32,500, was paid by or on behalf of the accused persons, and as the Tribunal has put it, a charitable trust was created by the respondent by the trust deed, dated August 6, 1945, the recitals whereof we have quoted above.

The question before us is what is the proper legal inference from the aforesaid facts found by the Tribunal. Both the Tribunal and the High Court have drawn the inference that a charitable trust was created by the persons who paid the money to the assessee, and all that the assessee did under the deed of trust, dated August 6, 1945, was

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to reduce the terms of the trust to writing. The High Court, therefore, applied the principle laid *Dudhuria* v. *Commissioner of Income-tax, Bengal* (1) and observed that by the overriding obligation imposed on the assessee by the persons who paid the money, the sum of Rs. 32,500, never became the income of the assessee; and the amount became trust property as soon as it was paid, there being no question of the application of part of his income by the assessee.

On behalf of the appellant it has been contended that the inference which the Tribunal and the High Court drew is not the proper legal inference which flows from the facts found, and according to the learned Attorney-General who appeared for the appellant, the proper legal inference is that the amount was received by the assessee as his professional income in respect of which he later created a trust by the deed of trust dated August 6, 1945. He has submitted that there was no trust nor any legal obligation imposed on the assessee by the persons who paid the money, at the time when the money was received, which prevented the amount from becoming the professional income of the assessee. He has also contended that even the existence of a trust will make no difference, unless it can be held that the money was diverted to that trust before it could become professional income in the hands of the assessee.

We think that the question raised in this case can be decided by a very short answer, and that answer is that from the facts found by the Tribunal the proper legal inference is that the sum of Rs. 32,500, paid to the assessee was his professional income at the time when it was paid and no trust or obligation in the nature of a trust was

(1) (1933) 1 I.T.R. 135

created at that time, and when the assessee created a trust by the trust deed of Apgust 6, 1945, he applied part of his professional income as trust property. If that is the true conclusion as we hold it to be, then the principle laid down by the Privy Council in *Bejoy Singh Dudhuria's case* (1) has no application. It is indeed true, as has been observed by the High Court, that a trust may be created by any language sufficient to show the intention and no technical words are necessary. A trust may even be created by the use of words which are primarily words of condition, but such words will constitute a trust only "where the requisites of a trust are present, namely, where there are purposes independent of the donee to which the subject matter of the gift is required to be applied and an obligation on the donee to satisfy those purposes". The findings of the Tribunal showed clearly enough that the persons who paid the sum of Rs. 32,500 did not use any words of an imperative nature creating a trust or an obligation. They were anxious to have the services of the assessee in the Farrukhnagar case; the assessee was at first unwilling to give his services and later he agreed proposing that he would himself create a charitable trust out of the money paid to him for defending the accused persons in the Farrukhnagar case. The position is clarified beyond any doubt by the statements made in the trust deed of August 6, 1945. The assessee said therein that he was reserving his professional income as an advocate accruing after June, 1944 for payments of taxes and charity and, accordingly, when he received his professional income in the Farrukhnagar case he created a charitable trust out of the money so received. The clear statement in the

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trust deed, a statement accepted as correct by the Tribunal, is that the assessee created a trust on certain cnoditions, etc. It is not stated anywhere that the persons who paid the money created a trust or imposed a legally enforceable obligation on the assessee. Even in his affidavit the assessee had stated that "it was agreed that the accused would provide Rs. 40,000 for a charitable trust which I would create in case I defend them, on an absolutely clear and express understanding that the money would not be used for any private and personal purposes". Even in this affidavit there is no suggestion that the persons who paid the money created the trust or imposed any obligation on the assessee. It was the assessee's own voluntary desire that he would create a trust out of the fees paid to him for defending the accused persons in the Farrukhnagar case. Such a voluntary desire on the part of the assessee created no trust, nor did it give rise to any legally enforceable obligation. In the circumstances the Appellate Assistant Commissioner rightly pointed out that "if the accused persons had themselves resolved to create a charitable trust in memory of the professional aid rendered to them by the appellant and had made the assessee trustee for the money so paid to him for that purpose, it could, perhaps, be argued that the money paid was earmarked for charity *ab initio* but of this there was no indication anywhere". In our opinion the view taken by the Appellate Assistant Commissioner was the correct view. The money when it was received by the assessee was his professional income, though the assessee had expressed a desire earlier to create a charitable trust out of the money when received by him. Once it is held that the amount was received as his professional income, the assessee is clearly liable to pay tax thereon. In our opinion the correct answer to

the question referred to the High Court is that the amount of Rs. 32,500 received by the assessee was professional income taxable in his hands.

Learned Counsel for the respondent has referred us to a number of decisions where the principle laid down in *Bejoy Singh Dudhuria's case* (1) was applied. and has contended that where there is an allocation of a sum out of revenue as a result of an overriding title or obligation before it becomes income in the hands of the assessee, the allocation may be the result of a decree of a court, an arbitration award or even the provisions of a will or deed. In view of the conclusion at which we have arrived, the decisions relied upon can hardly help and it is unnecessary to consider them. Our conclusion is that there was no overriding obligation imposed on the assessee at the time when the sum of Rs. 32,500 was received by him.

Accordingly, we allow this appeal and set aside the judgment and order of the High Court. The answer to the question is in favour of the appellant, namely, that the sum of Rs. 32,500 received by the assessee was his professional income taxable in his hands. The appellant will be entitled to his costs throughout.

B. R. T.

SUPREME COURT

Before P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah, K. C. Das Gupta and J. C. Shah.

DALIP SINGH,—*Appellant.*

versus

THE STATE OF PUNJAB,—*Respondent.*

Civil Appeal No. 235 of 1958.

1960

July 28th

Constitution of India (1950)—Article 311—Compulsory retirement of a Government servant under Rule 278 of the Patiala State Regulations—Whether removed from service.

Held, that the compulsory retirement of a Government servant under Rule 278 of the Patiala State Regulations

did not amount to removal from service so as to attract the provisions of Article 311 of the Constitution of India. The order of compulsory retirement does not purport to be passed on any charge of misconduct or inefficiency nor has the officer lost the benefit he has earned as he has been allowed full pension. In fact Rule 278 itself provides for retirement on pension.

Appeal from the Judgment and Decree, dated the 18th October, 1956, of the former PEPSU High Court in Regular First Appeal No. 11 of 1954, arising out of the Judgment and Decree, dated the 21st of November, 1953, of the Additional District Judge, Patiala.

For the Appellant : M/s. Gopal Singh and K. R. Krishnaswamy, Advocates.

For the Respondent : Mr. N. S. Bindra, Senior Advocate (Mr. D. Gupta, Advocate, with him).

JUDGMENT

The following Judgment of the Court was delivered by

Das Gupta, J.

DAS GUPTA, J.—The appellant Dalip Singh entered the service of the Patiala State in 1916 and rose to the rank of Inspector-General of Police of the State in June, 1946. After the formation of the State of Pepsu he was absorbed in the Police Service of the newly formed State and was appointed and confirmed as Inspector-General of Police thereof. While holding that post he proceeded on leave from October 18, 1949, till August 17, 1950. On August 18, 1950, an order was made by the Rajpramukh of the State in these words:—

> "His Highness the Rajpramukh is pleased to retire from service Sardar Dalip Singh, Inspector-General of Police, Pepsu (on leave) for administrative reasons with effect from the 18th August, 1950."

A copy of this order was forwarded to the appellant. Thereupon on August 19, 1950, the appellant wrote to the Chief Secretary of the State stating that by his retirement he would be put to heavy loss, i.e., about Rs. 50,000 which he would have earned as his pay and allowances etc., during this period and that his pension was also being affected and that this decision of the Government tantamounts to his removal from service. He requested that the Government should let him know the grounds which had impelled the Government to take this decision about his removal. Ultimately on March 30, 1951, the Government mentioned the charges against him on the basis of which the Government had decided to retire him on administrative grounds. After service of notice under s. 80 of the Code of Civil Procedure the appellant brought a suit in the Court of the District Judge, Patiala against the State of Pepsu asking for a declaration that the orders of August 16, 1950, and August 18, 1950, whereby "the plaintiff has been removtd from the post of Inspector-General of Police, Pepsu, are unconstitutional, illegal, void, ultra vires and inoperative and that the plaintiff still continues to be in the service of the defendant as Inspector-General of Police and is entitled to the arrears of his pay and allowances from August 18, 1950, and is also entitled to continue to draw his pay and allowances till his retirement at the age of superannuation; and a decree for the recovery of Rs. 26,699-13-0 and full costs of this suit and future interest."

The main plea on which the suit was based was that the order of August 18, 1950, amounted to his removal from service within the meaning of Art. 311(2) of the Constitution and the provisions of that article not having been complied with, the termination of his service was void and inoperative

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in law. The respondent State contended that the plaintiff had been retired from service and had not been removed from service and so Art. 311 of the Constitution had no application. On this question the trial Court came to the conclusion that the order compulsorily retiring the plaintiff amounted to his removal within the meaning of Art. 311 of the Constitution and as the requirement of that Article had not been complied with, it held that the termination of service effected by that order was void in law. The Court accordingly decreed the suit in favour of the plaintiff declaring that the orders of the Government dated August 18, 1950, whereby the plaintiff had been removed from the post of Inspector-General of Police, Pepsu, are unconstitutional, illegal, void and *ultra vires* and inoperative and that the plaintiff still continued to be in the service of the defendant as Inspector-General of Police and is entitled to the arrears of his pay and allowances from August 18, 1950, and is also entitled to continue to draw his pay and allowance till his retirement at the age of superannuation and a decree for the recovery of Rs. 26,699-13-0.

On appeal by the State, the Pepsu High Court disagreeing with the trial court held that the order of compulsory retirement did not amount to removal from service within the meaning of Art. 311 of the Constitution and accordingly allowed the appeal and dismissed the plaintiff's suit.

The main contention of the plaintiff before us was that the order of retirement did amount to his removal from service within the meaning of Art. 311 of the Constitution. The learned counsel also wanted to argue that Rule 278 of the Patiala State Regulations under which the Government

apparently made the order of compulsory retirement was no longer operative. It appears that the Patiala State Regulations which continued to govern the members of the services of that State after they became integrated into the Pepsu State Services were revised from time to time. It was suggested by the learned counsel that the revised rules do not contain any rules similar to Rule 278. Rule 278 of the Patiala State Regulations was in the following words:—

> "278. For all classes of pensions the person who desires to obtain the pension is required to submit his application before any pension is granted to him.
>
> The State reserves to itself the right to retire any of its employees on pension on political or on other reasons."

The learned counsel though wanting to persuade us that the Rule about the State reserving to itself the right to retire any of its employees on pension on political or on other reasons was not present in the new rules, was unable to show us however that before August 18, 1950, there had been any revision of Rule 278. It appears that revised rules for Travelling Allowance were published in 1946 as Vol. II of the new rules; and rules relating to pay and allowances were published as Vol. I in 1947. Thereafter in 1952 we find that the first volume of the Pepsu Service Regulations as regards pay and leave rules was published. In the same year the third volume of the Pepsu State Regulations containing rules relating to pensions was published. In the preface to this volume we find this statement :—

> "The Revised Edition of the Patiala State Regulations relating to pay, allowances, leave,

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pension and travelling allowance was published in the year 1931. Subsequently the travelling allowance rules were revised and issued as Patiala Service Regulations Vol. II, in the year 1946. Similarly the pay, allowances and leave rules were taken out from the Revised Edition (1931) and printed as Patiala Services Regulations, Volume I, in the year 1947. The other rules relating to pensions continued to remain in the Revised Edition (1931) and kept up to date by the issue of correction slips. On the formation of the Patiala and East Punjab States Union on 20-8-48, these rules were made applicable to the entire territories of the Union by Ordinance No. 1 of 2005. The number of copies of this publication available for official use had run out of stock and great difficulty has been experienced in Government offices for want of it for reference. It was therefore found necessary to revise and reprint this publication to make it available to all offices".

This makes it clear that up to the publication in 1952 of Volume III of the Pepsu Service Regulations the pension rules appearing in the 1931 edition of the Patiala State Regulations continued to be applicable to Pepsu. On August 18, 1950, therefore it is reasonable to hold that Rule 278 in its entirety remained in force and was applicable to Pepsu. It is interesting to mention that in this 1952 edition also this reservation by the Government of the "right to retire any of its employees on pension on political or on other reasons" has been maintained (*Vide* Chapter V, Rule 10). The contention of the learned counsel that Rule 278

was not applicable to the case of the appellant on August 18, 1950, is therefore totally without foundation.

This brings us to the main contention in the case viz., that the compulsory retirement of the appellant under Rule 278 of the Patiala State Regulations was a removal from service within the meaning of Art. 311 of the Constitution. The question whether the termination of service by compulsory retirement in accordance with Service Rules amount to removal from service was considered by this Court in *Shyamlal* v. *The State of U. P. and the Union of India* (1) and again recently in *State of Bombay* v. *Subhagchand Doshi* (2). The Court decided in *Shyam Lal's Case* that two tests had to be applied for ascertaining whether a termination of service by compulsory retirement amounted to removal or dismissal so as to attract the provisions of Art. 311 of the Constitution. The first is whether the action is by way of punishment and to find that out the Court said that it was necessary that a charge or imputation against the officer is made the condition of the exercise of the power; the second is whether by compulsory retirement the officer is losing the benefit he has already earned as he does by dismissal or removal. In that case in fact a charge-sheet was drawn up against the officer and an enquiry held but ultimately the order of compulsory retirement was not based on the result of the enquiry. The Court pointed out that the enquiry was merely to help the Government to make up its mind as to whether it was in the public interest to dispense with his services so that the imputation made in the charge-sheet was not being made the condition of the exercise of the power.

(1) (1955) I.S.C.R. 26.
(2) (1958) S.C.R. 571

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These tests were applied in *Doshi's Case* (1) and it was held that the provisions of compulsory retirement under Rule 165-A of the Saurashtra Civil Service Rules under which the order of retirement was made there was not violative of Art. 311(2). It was pointed out that "while misconduct and inefficiency are factors that enter into the account where the order is one of dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background and the enquiry, if held—and there is no duty to hold an enquiry—is only for the satisfaction of the authorities who have to take action, in the case of dismissal or removal, they form the very basis on which the order is made and the enquiry thereon must be formal, and must satisfy the rules of natural justice and the requirements of Art. 311(2)."

In the case before us the order of the Rajpramukh does not purport to be passed on any charge of misconduct or inefficiency. All it states is that the compulsory retirement is for "administrative reasons". It was only after the appellant's own insistence to be supplied with the grounds which led to the decision that certain charges were communicated to him. There is therefore no basis for saying that the order of retirement contained any that considerations of misconduct or inefficiency imputation or charge against the officer. The fact weighed with the Government in coming to its conclusion whether any action should be taken under Rule 278 does not amount to any imputation or charge against the officer.

Applying the other test, viz., whether the officer has lost the benefit he has earned, we find that the officer has been allowed full pension. There is no question of his having lost a benefit earned. It may be pointed out that Rule 278 itself

(1) (1958) S.C.R. 571.

provides for retirement on pension. If the provision had been for retirement without pension in accordance with the rules there might have been some reason to hold that the retirement was by way of punishment. As however the retirement can only be on pension in accordance with the rules—in the present case full pension has been granted to the officer—the order of retirement is clearly not by way of punishment.

In *Doshi's Case* (1) there is at p. 579 an observation which might at first sight seem to suggest that in the opinion of this Court compulsory retirement not amounting to dismissal or removal could only take place under a rule fixing an age for compulsory retirement. We do not think that was what the Court intended to say in Doshi's Case. In Doshi's Case there was in fact a rule fixing an age for compulsory retirement, at the age of 55, and in addition another rule for compulsory retirement after an officer had completed the age of 50 or 25 years of service. It was in that context that the Court made the above observation. It had not in that case to deal with a rule which did provide for compulsory retirement, at any age whatsoever irrespective of the length of service put in. It will not be proper to read the observations in Doshi's Case referred to above as laying down the law that retirement under the rule we are considering must necessarily be regarded as dismissal or removal within the meaning of Art. 311.

We are therefore of opinion that the High Court was right in holding that the order of compulsory retirement made against the appellant was not removal from service so as to attract the provisions of Art. 311 of the Constitution and that the suit was rightly dismissed.

The appeal is accordingly dismissed with costs.

B. R. T. . .

(1) (1958) S.C.R. 571.