The classification between the processed or split pulses and unprocessed or unsplit pulses is a reasonable classification. It is based on the use to which those goods can be put.

There is no doubt that a taxing provision has to be strictly interpreted. If a Legislature intended to impose any tax, that intention must be made clear by the language employed in the statute, but that does not mean that the provision in a taxing statute should not be read reasonable.

It is true that the Legislature cannot delegate its legislative functions to any other body. But subject to that qualification it is permissible for the Legislature to delegate the power to select the persons on whom the tax is to be levied. In the very nature of things, it is impossible for the Legislature to enumerate the goods, on dealings in which sales tax or purchase tax should be imposed. It is also impossible for the Legislature to select the goods, which should be subjected to a single point sales or purchase tax. Before making such selections several aspects, such as the impact of the levy on the society, economic consequences and the administrative convenience will have to be considered. These factors may change from time to time. Hence in the very nature of things, these details have got to be left to the executive."

I agree that these writ petitions be dismissed with costs.

K.S.K.

FULL BENCH

Before Bal Raj Tuli, A. D. Koshal, S. S. Sandhawalia, Prem Chand Jain and Man Mohan Singh Gujral, JJ.

B. R. *GULIANI,—Petitioner.*

versus

PUNJAB AND HARYANA HIGH COURT, ETC.,—*Respondents.*

Civil Writ No. 2586 of 1971

March 13, 1975.

Constitution of India (1950)—*Articles* 233, 235 *and* 320—*State Government passing order of removal, dismissal or re-instatement of a Judicial Officer on the advice of Public Service Commission—Such order—Whether* ultra vires *Article* 235 *of the Constitution—Punishment of removal of a Judicial Officer—Recommendation of*

the High Court as to—Whether binding on the State Government—Article 311—Applicability of—Whether limited in the case of Judicial Officers.

Held, (per Full Bench) that consultation with the Public Service Commission in respect of the members of the Judiciary, is expressly ruled out by Article 235 of the Constitution, otherwise the Constitution makers would have provided whether the recommendation of the High Court or the advice tendered by the Public Service Commission would be binding on the Government in case there was conflict between the two. If the advice of the Public Service Commission is to prevail against the recommendation of the High Court, then the soleness of the authority of the High Court in matters of discipline will be whittled down. The complete administrative control in respect of the members of the Judiciary vests in the High Court and, therefore, the members of the Judicial Service, although belonging to the civil service of the State, do not serve under the State Government, but only in connection with the affairs of the State and, therefore, consultation with the Public Service Commission cannot be had in the case of disciplinary matters, with regard to Judicial Officers. The Public Service Commission, is not to be consulted in regard to disciplinary matters when a member of the Judicial Service is involved. It is to be consulted only by the State Government or an authority subordinate to it. The High Court, not being subordinate to the State Government, has not to consult the Public Service Commission when it inflicts any punishment within its power. The Governor, therefore, has also not to consult the Commission when he has to pass the order of removal from service or dismissal therefrom or re-instatement with respect to a member of the Judicial Service. Any such order passed on the basis of the advice tendered by the Public Service Commission which is accepted by the State Government in preference to the advice and recommendation of the High Court suffers from a grave constitutional infirmity and is, therefore, ultra vires Article 235 of the constitution and is *non est*, because the Commission being an extraneous body cannot be consulted to influence the decision of the punishing authority.

Held, (per majority-Tuli, Koshal. Sandhawalia and Jain, JJ., Gujral, J. Contra.) that High Court is the sole custodian of the control over the Judiciary and that control is complete. In exercise of that power of control, the High Court has to decide what punishment is deserved by the delinquent officer, and if the punishment proposed is within its own jurisdiction, it can pass the necessary order itself, but if the same can be inflicted only by the Governor, it has to forward the papers to him for passing the necessary order. However, the power to pass these orders does not give the power of control to the Governor so as to entitle him to review the whole case himself in order to find out whether the recommendation made by the High Court is correct or not. The disciplinary control cannot be divided between two authorities, viz., the High Court and the Governor. The

power of control of the High Court and the power of the Governor to dismiss or remove from service a judicial officer can be harmonised by saying that the quasi-judicial part of the procedure for inflicting one of the two major punishments is to be done by the High Court while the administrative order is passed by the Governor. The High Court will propose the punishment and the Governor will impose it. But in the exercise of the power of passing an order of removal from service or dismissal from service as recommended by the High Court, the Governor cannot decide whether the delinquent officer is guilty or not. He has to accept the verdict of the High Court in this matter. Once the recommendation is made by the High Court, the Governor has no right to differ from that recommendation and refuse to pass the orders on any consideration whatsoever. After a person is appointed to the judicial service of a State, the State Government becomes *functus officio* and the entire control-administrative, Judicial and disciplinary-vests in the High Court. As long as that officer remains in service, all orders *qua* him in respect of his service have either to be passed by the High Court or by the State Government only on the recommendation of the High Court in respect of the matters over which the State Government has been given the jurisdiction under the provisions of the Constitution or the conditions of service governing the Judicial Service. The State Government on its own initiative cannot pass any order. Hence the recommendation of the High Court for the punishment of removal of a judicial officer is binding on the State Government and it has no right to pass any order contrary to such recommendation.

Held, (per majority) that Article 311 of the Constitution applies only to such cases in which the appointing authority is also the controlling authority and has the right to inflict all the punishments, whether minor or major and to initiate the departmental enquiries and deal wth the case till the award of punishment. In the case of a judicial officer, Article 311 has a limited application, that is, the orders of dismissal or removal from service are to be passed by the Governor, but the enquiries have to be held by the High Court. The matter is referred to the Governor because he being the appointing authority has to pass an order under Article 311(1) of the Constitution. The High Court cannot pass an order in the name of the Governor. The power given to the Governor is to pass the order of dismissal from service or removal therefrom as recommended by the High Court. The complete disciplinary control over the subordinate judiciary vests in the High Court and it has the right to propose the punishment on a delinquent officer who has been found guilty after due enquiry and after consideration of his explanation. Article 311 has to be considered in harmony with Article 235 of the Constitution and the Governor has merely to pass an order and not to adjudicate upon the matter. Any other interpretation will impinge on the complete control of the High Court over the judicial officers and anomalous situation will arise. It will create a dead-lock or stalemate and confrontations between the Executive and the High Court.

Held, (per Gujral, J. Contra.) that keeping the cardinal principle of the independence of the judiciary in the forefront, the control envisaged in Article 235 of the Constitution must be taken to be complete in all respects and in all fields including the power to initiate and hold departmental proceedings except to the extent it is limited by Articles 233, 234 and 311 of the constitution. The power to initiate and conduct departmental proceedings further includes the power to impose punishment other than of dismissal or removal from service which power can only be exercised by the Governor acting under Article 311 of the Constitution. While exercising such a power the Governor has to proceed on the basis of the inquiry held by the High Court and the recommendation made by it in regard to the punishment to be imposed, after the High Court has taken into consideration the explanation offered by the delinquent officer. These recommendations are made by the High Court in the exercise of its powers of control. The final decision in the matter of imposing the punishment of dismissal or removal from service is to be taken by the Governor but while arriving at the final conclusion the Governor must have due regard for the recommendation of the High Court and should in all conceivable cases act according to these recommendations. However, if in an isolated case the Governor takes a view, different from the one recommended by the High Court, it cannot be said in law that the order of the Governor is without jurisdiction. If a departure has been made by the Governor from the advice tendered by the High Court, it may be open to examination by a Court whether extraneous considerations are the basis of such a decision, but the decision is not open to challenge on the ground of lack of jurisdiction. This interpretation does not cause any erosion in the power of control vesting in the High Court and its only implication is that the principle of checks and balances envisaged in the constitution would also come into play. Such an interpretation being in consonance with the objective which the framers of the Constitution had in view while providing a safeguard to the services under Article 311 would be only appropriate one if a harmonious construction is to be placed on Articles 235 and 311 of the Constitution and neither of them, is to be allowed to render the other nugatory.

Held, (per Gujral, J.) that Article 311 of the Constitution is only concerned with dismissal or removal of a Government servant to whichever wing or department he may belong. In relation to Article 235, Article 311 is a special provision dealing with the imposition of major punishments mentioned therein. If ever a conflict arises between Articles 235 and 311, the former will have to be interpreted in a manner so as to leave the applicability of Article 311 unaffected. Notwithstanding the power of control which the High Court has under Article 235, the judicial officer cannot be deprived of the right to a reasonable opportunity to show cause to the satisfaction of the appointing authority when the question of the imposition of the punishment of dismissal or removal from service arises. The order that the Governor passes under Article 311 is not merely a formal order but an order based on an appreciation of the material placed

before him by the agency which has held the departmental enquiry. He has to pass an order based on judicial approach and not merely a formal order. While passing such an order, whether it is termed judicial or administrative, if the Governor is merely to act on the recommendation of the High Court without applying his own mind, it would render the provisions of Article 311 nugatory and deprive the Government servant of its protective shield. It will turn the Article into an empty shell.

Case referred by the Division Bench consisting of Hon'ble Mr. Justice D. K. Mahajan and Hon'ble Mr. Justice Prem Chand Jain on 16th February, 1972 to a Full Bench for decision of an important question of law involved in the case.

The Full Bench consisting of Hon'ble Mr. Justice Bal Raj Tuli, Hon'ble Mr. Justice A. D. Koshal, Hon'ble Mr. Justice S. S. Sandhawalia, Hon'ble Mr. Justice Prem Chand Jain and Hon'ble Mr. Justice Man Mohan Singh Gujral, finally decided the case on 13th March, 1975.

Petition under Articles 226 and 227 of the Constitution of India praying:—

(a) *That the writ in the nature of mandamus directing respondents 1 and 2 to post the petitioner as Sub-Judge First Class-cum-Magistrate First Class as a member of the Haryana Civil Service (Judicial) be issued.*

(b) *That a writ in the nature of mandamus directing the respondents to disburse full salary to the petitioner including the salary for the period when the petitioner remained under suspension, be issued.*

(c) *That a direction to respondents 1 and 2 that the petitioner be considered for promotion to the higher post of Additional District and Sessions Judge with retrospective effect from the date when person junior to him was promoted to that post, be issued.*

(d) *That any other writ or order as this Hon'ble Court may deem fit under the circumstances of this case be issued.*

(e) *That the record of the case be ordered to be sent for.*

(f) *That the cost of the petition be awarded to the petitioner.*

H. L. Sibal, Senior Advocate with Kuldip Singh, G. C. Garg, S. C. Sibal and R. C. Setia, Advocates, *for the petitioner.*

J. N. Kaushal, Advocate-General, Haryana, with Ashok Bhan, Advocate, *for respondent No. 3.*

Anand Swaroop, Senior Advocate and R. L. Aggarwal, Amar Nath G. Chaudhry, and C. P. Sapra, Advocates, *for the respondents.*

JUDGMENT

TULI, J.—The petitioner, Shri Baldev Raj Guliani, was recruited to the Punjab Civil Service (Judicial Branch) as a result of his success in the competitive examination held in June, 1954. He was appointed as Subordinate Judge, IV Class on February 27, 1956, and was conferred powers of Subordinate Judge, 1st Class, in 1957. He was confirmed as a member of the Punjab Civil Service (Judicial) with effect from October 26, 1957,—*vide* order, dated March 17, 1961. He was allowed to cross the Efficiency Bar, with effect from February 27, 1964, —*vide* order, dated February 2, 1965.

(2) The petitioner was posted as Subordinate Judge-cum-Magistrate, 1st Class, Amloh, district Patiala, from May 28, 1964, to May 18, 1965, and the Bar Association of that place sent certain complaints against his integrity to the High Court which were entrusted to Shri Gurbachan Singh, District Judge, for a fact-finding enquiry by letter, dated May 11, 1965. On the report of Shri Gurbachan Singh, the High Court came to the conclusion that it was a fit case for departmental enquiry. Consequently, Shri Pritam Singh Pattar (then District Judge, Sangrur, and now an Hon'ble Judge of this Court) was appointed an Enquiry Officer on July 21, 1966, to enquire into the charges levelled against the petitioner. The petitioner was suspended by the State Government pending enquiry at the instance of the High Court. The learned Enquiry Officer submitted his report to this Court and found him guilty of all charges except one. On a perusal of that report, the High Court formed an opinion that it was a fit case in which the punishment of removal from service should be inflicted on the petitioner. Consequently, the case was sent to the State Government to serve the show-cause notice under Article 311(2) of the Constitution. That notice was issued to the petitioner by the State Government on March 13, 1967, to show-cause why the penalty of removal from service should not be imposed on him. This notice was issued by the State Government on the recommendation of the High Court to which the petitioner submitted his explanation on April 20, 1967, through the High Court. The High Court considered that explanation and expressed the view that it was not satisfactory and recommended that the petitioner should be removed from service. The State Government examined the case and was inclined to agree with the views of the High Court and the recommendation made by it. The Government, however, referred the case to the Haryana Public Service Commission for advice because

it was considered that such reference to the Commission was necessary in view of the provisions of Article 320(3)(c) of the Constitution and the relevant rules. The Haryana Public Service Commission advised that no case had been made out against the petitioner and that he should be exonerated. The State Government once again examined the case in the light of the views of the Commission and decided to accept its advice that the petitioner should be exonerated. The advice of the Commission, however, was not sent to the High Court for examination or comments and an order reinstating the petitioner in service with immediate effect was issued by the State Government on August 24, 1968, a copy of which was sent to the Registrar of this Court for information and necessary action. This order reads as under :—

> "The Governor of Haryana is pleased to reinstate Shri B. R. Guliani, H.C.S., (Judicial Branch) under suspension, in service with immediate effect. Orders regarding his pay and allowance during the suspension period will be issued separately."

A D.O. letter, dated August 24, 1968, was also received by the Registrar of this Court from Shri H. V. Goswami, I.A.S. (presumably the Secretary or the Deputy Secretary of the Services Department, Haryana Government), reading as under :—

> "I am desired to refer to the Hon'ble High Court's letter No. 671/RHC, dated the 31st May, 1967, and the subsequent correspondence resting with No. 85/RHC, dated the 24th January, 1968, and to say that the case was referred to the Haryana Public Service Commission for advice. The Commission have recommended that Shri Guliani may be completely exonerated of all charges. The State Government have decided to accept the advice of the Commission in this case and orders regarding the reinstatement of Shri Guliani in service are being issued separately. I am desired to request that the Hon'ble High Court may kindly consider the question of posting Shri Guliani on his reinstatement in service."

The High Court, however, did not issue any posting orders to the petitioner for it was of the opinion that the order was not legal as it had been passed on the advice of the Public Service Commission which could not be consulted in the matter and the Government

should have passed the order in the light of the recommendation made by it. Consequently, the High Court requested the Government to review its order reinstating the petitioner but the Government did not take any action on that suggestion. The petitioner was not allowed any salary for the period subsequent to the order of reinstatement, except the subsistence allowance which was being paid to him during the period of suspension, by the Accountant-General on the ground that after reinstatement he had not been appointed to a post by the High Court and unless that was done, he could not be allowed to draw any salary. The High Court refused to give the posting orders because in its view he was still under suspension and had not been validly reinstated. The petitioner then filed the present petition under Article 226 of the Constitution on July 12, 1971, *inter alia* for the following reliefs:—

(a) that the writ in the nature of *mandamus* directing respondent 1 and 2 to post the petitioner as Sub-Judge, First Class-cum-Magistrate, First Class, as a member of the Haryana Civil Service (Judicial) be issued;

(b) that a writ in the nature of *mandamus* directing the respondents to disburse full salary to the petitioner including the salary for the period when the petitioner remained under suspension, be issued;

(c) that a direction to respondents 1 and 2 that the petitioner be considered for promotion to the higher post of Additional District and Sessions Judge, with retrospective effect from the date when person junior to him was promoted to that post, be issued;

(d) that any other writ or order as this Hon'ble Court may deem fit under the circumstances of the case be issued.

(3) This petition came up for hearing before a Division Bench of this Court on February 15, 1972, and the Bench expressed the opinion that the points raised in the petition were of considerable importance and the decision, one way or the other, would have a very far-reaching effect and, therefore, it was appropriate if this petition was decided by a larger Bench of five Judges for an authoritative pronouncement. In pursuance of that order of reference, this petition has come up before this Bench for decision.

(4) It may also be mentioned that the petitioner attained the age of 55 years on January 5, 1975, and a notice was issued to him

on December 16, 1974, informing him that after the expiry of three months from the date of receipt of the notice he shall be deemed to have retired from service under rule 5.32(c) of the Punjab Civil Services Rules, Volume II. This notice was issued by the State Government on the recommendation of the High Court. The petitioner has not challenged the issue of that notice and has accepted the same.

(5) Before proceeding to discuss the arguments, it seems appropriate to set out the charges of which the petitioner was found guilty by the High Court in agreement with the findings of the Enquiry Officer. These charges were :—

1. (a) That during his posting at Amloh, he was not deciding the cases, both civil and criminal, promptly, but was improperly adjourning them from time to time after the evidence had been recorded and even after the arguments had been heard, for pronouncement of judgment from which the only inference that could be raised was that he was giving opportunity to the parties of the said cases to contact him.

(b) He was intentionally giving false certificates with his monthly statements of work to the effect that all cases had been decided within thirty days of the closing of the evidence.

(2) In the matter of awarding costs, he did not exercise proper judicial discretion inasmuch as he awarded costs recklessly and sometimes to favour particular parties.

(3) He abused his official position and power in the matter of granting bail. In some cases he granted anticipatory bail although he was not competent to do so.

(4) He was not recording evidence in accordance with the provisions of the Code of Civil Procedure and the Code of Criminal Procedure and the instructions contained in the High Court Rules and Orders. In his Court at Amloh, evidence was not recorded by him as required by law, but used to be recorded simultaneously in civil and criminal cases, on the one side, by his Reader with the help of the counsel for the parties, and on the other, by the

Steno-typist and another official of his Court with the help of the Prosecuting Sub-Inspector of Police and the counsel for the accused. He himself used to read the newspapers, sleep or do some other work when evidence was being recorded in the aforesaid manner.

In the statement of allegations supplied with the charge-sheet, the particulars of the civil and criminal cases referred to in the charges, were supplied.

(6) The following points of law arise for decision in this case:—

(1) Whether the Government was bound by the recommendation of the High Court that the punishment of removal from service should be inflicted on the petitioner and had no right to pass any order contrary to that recommendation ?

(2) Whether it was necessary for the State Government to consult the Haryana Public Service Commission and be influenced by the advice tendered by it ? If not, whether the order of exoneration and reinstatement is void because it was passed on the advice of the Public Service Commission ?

I shall deal with these points in seriatim.

The petitioner belongs to the Judicial Service of the State and Article 234 of the Constitution provides :

"234. Appointments of persons other than District Judges to the Judicial Service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State."

In Shamsher Singh v. *State of Punjab and another* (1), it has been held in para 88 that "the appointment as well as removal of the members of the Subordinate Judicial Service is an executive action of the Governor to be exercised on the aid and advice of the Council of Ministers in accordance with the provisions of the Constitution" and that appointments and removals of persons are

(1) A.I.R. 1974 S.C. 2192.

made by the Governor as the constitutional head of the executive on the aid and advice of the Council of Ministers. It has been submitted by the learned counsel for the petitioner that under Article 311 of the Constitution the punishment of dismissal or removal from service could be inflicted only by the Government and that too after holding an enquiry and issuing a show-cause notice with regard to the infliction of the proposed punishment. The Punjab Civil Services (Judicial Branch) Rules also prescribe the Government as the punishing authority for awarding the penalty of removal from the Service which does not disqualify from future employment and dismissal from the Service which ordinarily disqualifies from future employment. On the basis of these provisions of the Constitution and the Rules, it has been submitted that the Government had the power to inflict the punishment of removal from service or dismissal from service and if it exonerated the petitioner from all the charges, the order was passed with jurisdiction and the High Court cannot refuse to act upon it and must issue posting orders to the petitioner. It has, therefore, to be decided whether the order passed by the Governor on August 24, 1968, reinstating the petitioner into service was a legal order and binding on the High Court.

(7) Article 235 of the Constitution, which provides for control over subordinate courts in the High Court, is in the following words :—

> "*Article* 235. The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law."

The scope and ambit of this Article was considered by the Supreme Court in *The State of West Bengal* v. *Nripendra Nath Bagchi* (2), wherein after tracing the history of the separation of the judiciary

(2) A.I.R. 1966 S.C. 447=(1966) 1 S.C.R. 771.

from the executive and the meaning of the word 'control' used in Article 235 of the Constitution, their Lordships observed :

> "When the Constitution was being drafted, the advance made by the 1935 Act was unfortunately lost sight of. The draft Constitution made no mention of the special provisions, not even similar to those made by the Government of India Act, 1935, in respect of the subordinate judiciary. If that had remained, the judicial services would have come under Part XIV dealing with the services in India. An amendment, fortunately, was accepted and led to the inclusion of Articles 233 to 237. These articles were not placed in the Chapter on services but immediately after the provisions in regard to the High Courts. The articles went a little further than the corresponding sections of the Government of India, Act. They vested the 'control' of the district courts and the courts subordinate thereto in the High Courts and the main question is what is meant by the word 'control'. The High Court has held that the word 'control' means not only a general superintendence of the working of the courts but includes disciplinary control of the presiding judges, that is to say, the District Judge and Judges subordinate to him. It is this conclusion which is challenged before us on various grounds.
>
> Mr. B. Sen appearing for the West Bengal Government contends that the word 'control' must be given a restricted meaning. He deduces this (a) on a suggested reading of Article 235 itself and (b) on a comparison of the provisions of Chapter VI with those of Part XIV of the Constitution. We shall examine these two arguments separately as they admit of separate treatment. The first contention is that 'control' means only control of the day to day working of the courts and emphasis is laid on the words of Article 235 'District Courts' and 'courts subordinate thereto'. It is pointed out that the expressions 'district Judge' and 'Judges subordinate to him' are not used. It is submitted that if the incumbents were mentioned control might have meant disciplinary control but not when the word 'court' is used. Lastly, it is contended that conditions of service are outside 'control' envisaged by Article 235 because the conditions of service are to be

determined by the Governor in the case of the District Judge and in the case of Judges subordinate to the District Judge by the Rules made by the Governor in that behalf after consultation with the State Public Service Commission and with the High Court.

We do not accept this construction. The word 'control' is not defined in the Constitution at all. In Part XIV which deals with Services under the Union and the States the words 'disciplinary control' or 'disciplinary jurisdiction' have not at all been used. It is not to be thought that disciplinary jurisdiction of services is not contemplated. In the context the word 'control' must, in our judgment, include disciplinary jurisdiction. Indeed, the word may be said to be used as a term of art because the Civil Services (Classification, Control And Appeal) Rules used the word 'control' and the only rules which can legitimately come under the word 'control' are the Disciplinary Rules. Further, as we have already shown, the history which lies behind the enactment of these articles indicates that 'control' was vested in the High Court to effectuate a purpose, namely, the securing of the independence of the subordinate judiciary and unless it included disciplinary control as well, the very object would be frustrated. This aid to construction is admissible because to find out the meaning of a law, recourse may legitimately be had to the prior state of the law, the evil sought to be removed and the process by which the law was evolved. The word 'control', as we have seen, was used for the first time in the Constitution and it is accompanied by the word 'vest' which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day-to-day working of the court but contemplates disciplinary jurisdiction over the presiding Judge. Article 227 gives to the High Court superintendence over these courts and enables the High Court to call for returns, etc. The word 'control' in Article 235 must have a different content. It includes something in addition to mere superintendence. It is control over the conduct and discipline of the Judges. This conclusion is further strengthened by two other indications pointing clearly in

the same direction. The first is that the order of the High Court is made subject to an appeal if so provided in the law regulating the conditions of service and this necessarily indicates an order passed in disciplinary jurisdiction. Secondly, the words are that the High Court shall 'deal' with the Judge in accordance with the rules of service and the word 'deal' also points to disciplinary and not mere administrative jurisdiction.

Articles 233 and 235 make a mention of two distinct powers. The first is power of appointments of persons, their postings and promotion and the other is power of control. In the case of the District Judges, appointments of persons to be and posting and promotion are to be made by the Governor but the control over the District Judge is of the High Court. We are not impressed by the argument that the term used is 'district court' because the rest of the article clearly indicates that the word 'court' is used compendiously to denote not only the court proper but also the presiding Judge. The latter part of Article 235 talks of the man who holds the office. In the case of the judicial service subordinate to the District Judge the appointment has to be made by the Governor in accordance with the rules to be framed after consultation with the State Public Service Commission and the High Court but the power of posting promotion and grant of leave and the control of the courts are vested in the High Court. What is vested includes disciplinary jurisdiction. Control is useless if it is not accompanied by disciplinary powers. It is not to be expected that the High Court would run to the Government or the Governor in every case of indiscipline however small and which may not even require the punishment of dismissal or removal. These articles go to show that by vesting 'control' in the High Court the independence of the subordinate judiciary was in view. This was partly achieved in the Government of India Act, 1935, but it was given effect to fully by the drafters of the present Constitution. This construction is also in accord with the Directive Principles in Article 50 of the Constitution which reads:

'50. The State shall take steps to separate the judiciary from the executive in the public services of the State'."

The learned counsel for the State of West Bengal referred to Articles 309 to 311 of the Constitution and submitted that the dismissal and removal of a Government servant under Article 311 vested in the appointing authority and, therefore, such orders *qua* the members of the Judicial Service could be made only by the State Government, which meant that the disciplinary control of the High Court was not complete. The learned counsel also argued that this power of the Government also determined that the enquiry must be made by or under the directions of the Governor or the Government. To lend support to his contention, he referred to provisos (b) and (c) to clause (2) of Article 311, but their Lordships repelled the argument with the following observations :

> "That the Governor appoints District Judges and the Governor alone can dismiss or remove them goes without saying. That does not impinge upon the control of the High Court. It only means that the High Court cannot appoint or dismiss or remove District Judges. In the same way the High Court cannot use the special jurisdiction conferred by the two provisos. The High Court cannot decide that it is not reasonably practicable to give a District Judge an opportunity of showing cause or that in the interest of the security of the State it is not expedient to give such an opportunity. This the Governor alone can decide. That certain powers are to be exercised by the Governor and not by the High Court does not necessarily take away other powers from the High Courts. The provisos can be given their full effect without giving rise to other implications. It is obvious that if a case arose for the exercise of the special powers under the two provisos, the High Court must leave the matter to the Governor. In this connection we may incidentally add that we have no doubt that in exercising these special powers in relation to inquiries against District Judges, the Governor will always have regard to the opinion of the High Court in the matter. This will be so whoever be the inquiring authority in the State. But this does not lead to the further conclusion that the High Court must not hold the enquiry any more than that the Governor should personally hold the enquiry.
>
> There is, therefore, nothing in Article 311, which compels the conclusion that the High Court is ousted of the jurisdiction to hold the enquiry if Article 235 vested such a power in it.

> In our judgment, the control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal, subject however to the conditions of service, to a right of appeal if granted by the conditions of service, and to the giving of an opportunity of showing cause as required by clause (2) of Article 311 unless such opportunity is dispensed with by the Governor acting under the provisos (b) and (c) to that clause. The High Court alone could have held the enquiry in this case. To hold otherwise will be to reverse the policy which has moved determinedly in this direction."

From these observations it is abundantly clear that the High Court alone can hold the enquiry against a member of the Judicial Service and the Government cannot do so. This matter has been further clarified in *Samsher Singh's case* (1) (supra), wherein the following pertinent observations are to be found in para 78 of the report:—

> "The High Court for reasons which are not stated requested the Government to depute the Director of Vigilance to hold an enquiry. It is indeed strange that the High Court, which had control over the subordinate judiciary, asked the Government to hold enquiry through the Vigilance Department. The members of the subordinate judiciary are not only under the control of the High Court but are also under the care and custody of the High Court. The High Court failed to discharge the duty of preserving its control. The request by the High Court to have the enquiry through the Director of Vigilance was an act of self-abnegation. The contention of the State that the High Court wanted the Government to be satisfied makes matters worse. *The Governor will act on the recommendation of the High Court. That is the broad basis of Article* 235. The High Court should have conducted the enquiry preferably through District Judges. The members of the subordinate judiciary look up to the High Court not only for discipline but also for dignity. The High Court acted in total disregard of Article 235 by asking the Government to enquire through the Director of Vigilance." (Emphasis supplied).

According to these observations, the High Court alone is to hold the enquiry against a member of the subordinate judiciary and this view has been reiterated by the Supreme Court in *Shri N. S. Rao* v. *The State of Haryana and others* (3). From these premises it logically follows that the Enquiry Officer is to submit his report to the High Court which has to consider the same in order to find out whether the findings recorded by the Enquiry Officer are correct or not and whether any punishment is to be inflicted on the delinquent officer. It has not been disputed that the High Court alone is the competent authority to inflict punishments of censure, withholding of increment or promotion, including stoppage at the efficiency bar, reduction to a lower post or time scale or to a lower stage in the time scale and recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of order. If the High Court, on a review of the findings of the Enquiry Officer, is of the opinion that one of these punishments should be inflicted, it can pass the necessary order without reference to the Government, but if it comes to the conclusion that the punishment of removal from service or dismissal from service is called for, two courses may be open to the High Court, namely, (1) the High Court may itself issue the notice to the delinquent officer stating that it is tentatively of the opinion that punishment of removal from service or dismissal from service should be inflicted and he may show cause why a recommendation to inflict that punishment on him should not be made to the Governor and on receipt of his reply, consider the matter, and if it still is of the opinion that the punishment proposed in the notice should be inflicted on the delinquent officer, it shall forward the case to the Governor with the recommendation to pass that order, or (2) the High Court may forward the papers to the Governor with the recommendation that the delinquent officer deserves the punishment of removal or dismissal from service and a notice as required under Article 311(2) of the Constitution, may be issued to him to show cause against the infliction of that punishment. The reply to the show-cause notice will be received by the Government either directly or through the High Court, but the opinion of the High Court will be sought by the Government whether in view of the explanation tendered by the officer, the High Court is still of the opinion that the major punishment of removal from service or dismissal from service should be inflicted. The High Court will then consider the explanation tendered

(3) C.A. No. 1503 of 1973 and 852 and 854 of 1974 decided by Supreme Court on 24th January, 1975.

by the delinquent officer and make its recommendation to the Governor with regard to the punishment to be inflicted on him.

(8) It is argued that the issuing of the show-cause notice under Article 311(2) of the Constitution and passing of an order of punishment after receipt and consideration of the explanation tendered by the officer, constitute a quasi-judicial function which can be performed only by the punishing authority unaided by the advice of anybody else and, therefore, if the punishment of removal from service or dismissal from service cannot be passed by the High Court, but can be passed only by the Governor, he alone is to issue the show-cause notice and decide in the light of the explanation received from the officer concerned whether to impose that punishment or not and that the High Court does not come in the picture at that stage. This argument is inconsistent with the control of the High Court over the subordinate Courts and the Presiding Judges, as has been authoritatively laid down in *Nripendra Nath Bagchi's case* (2) (supra) while interpreting Article 235 of the Constitution. Therein it is said that the High Court is the sole custodian of the control over the Judiciary and that control is complete. In exercise of that power of control, the High Court has to decide what punishment is deserved by the delinquent officer, and if the punishment proposed is within its own jurisdiction, it can pass the necessary order itself, but if the same can be inflicted only by the Governor, it has to forward the papers to him for passing the necessary order. The power to pass these orders does not give the power of control to the Governor so as to entitle him to review the whole case himself in order to find out whether the recommendation made by the High Court is correct or not. The disciplinary control cannot be divided between two authorities, viz., the High Court and the Governor. The power of control of the High Court and the power of the Governor to dismiss or remove from service a judicial officer can be harmonised by saying that the quasi-judicial part of the procedure for inflicting one of the two major punishments is to be done by the High Court while the administrative order will be passed by the Governor. In other words, the High Court will propose the punishment and the Governor will impose it. The matter has to be referred to the Governor because (1) he, being the appointing authority has to pass the order under Article 311(1) of the Constitution, and (2) the High Court cannot pass an order in the name of the Governor whereas the order dismissing or removing a judicial officer from service has to be passed in the name of the Governor in the manner sanctioned by the Constitution. It is for that purpose alone that the case is forwarded

to the Governor. Any other interpretation of the role of the Governor in this matter will impinge upon the soleness of the control over the Judiciary vested in the High Court. In the exercise of his power of passing an order of removal from service or dismissal from service, the Governor cannot decide whether the delinquent officer is guilty or not; he has to accept the verdict of the High Court in this matter. At best (but without conceding) it may be open to the Governor to discuss the matter with the High Court in case he forms an opinion, on the material supplied to him by the High Court, that the punishment of removal from service or dismissal from service as recommended by the High Court is too harsh or not justified and if after discussion he still remains unconvinced, he should send back the case to the High Court to impose any other appropriate punishment within its own power. I may emphasise that the Governor and the High Court have to act in harmony as far as the Judiciary is concerned and the cardinal principle of the Constitution being that the Judiciary is to be independent of the Executive, complete control over the Judiciary vests in the High Court including disciplinary matters and it is only proper that the Governor should feel himself bound by the recommendation of the High Court in the matter of the guilt and the punishment that the delinquent officer deserves. This conclusion flows from the control of the High Court embodied in Article 235 of the Constitution as explained by their Lordships of the Supreme Court in *Nripendra Nath Bagchi's case* (2) (supra). Some observations in the other decided cases also lead to that conclusion. In paragraph 78 of the report in *Shamsher Singh's case* (1), which has been quoted above, it has been ruled that "the Governor will act on the recommendation of the High Court. That is the broad basis of Article 235." It has also been emphasised in that judgment that the Governor cannot hold any enquiry through his own agency even when he does not feel satisfied with the recommendation made by the High Court. In the same judgment, Krishna Iyer, J., for himself and Bhagwati J., in reference to the provisions of Article 217(3) of the Constitution which provides that "if any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final", observe in paragraph 148 of the report as under:—

> "In the light of the scheme of the Constitution we have already referred to, it is doubtful whether such an interpretation as to the personal satisfaction of the President is correct.

> We are of the view that the President means, for all practical purposes, the Minister or the Council of Ministers as the case may be, and his opinion, satisfaction or decision is constitutionally secured when his Ministers arrive at such opinion, satisfaction or decision. *The independence of the Judiciary, which is a cardinal principle of the Constitution* and has been relied on to justify the deviation, is guarded by the relevant Article making consultation with the Chief Justice of India obligatory. *In all conceivable cases consultation with that highest dignitary of Indian Justice will and should be accepted by the Government of India* and the Court will have an opportunity to examine if any other extraneous circumstances have entered into the verdict of the Minister, if he departs from the counsel given by the Chief Justice of India. In *practice the last word in such a sensitive subject must belong to the Chief Justice of India,* the rejection of his advice being ordinarily regarded as promoted by oblique considerations vitiating the order. In this view it is immaterial whether the President or the Prime Minister or the Minister for Justice formally decides the issue." (Emphasis supplied).

It is true that in paragraph 99 of the report, the learned Judge said:

> "Thirdly, has the High Court the last word regarding termination of service of judicial personnel, Government being a formal agency to implement it? This was challenged at the bar, although we do not finally deal with it for the reasons to be mentioned later."

On the basis of this observation it has been vehemently argued by the learned counsel for the petitioner and the State Government that this Court **should not be influenced by the observations of the learned** Judge in paragraph 148 of the report. The observations of the learned Judge in paragraph 155 of the report, reading as under, are also pertinent:—

> "The second spinal issue in the case, as earlier indicated. *bears on fearless justice, another prominent creed of our Constitution. The independence of the Judiciary is a fighting faith of our founding document.* Since the days of Lord Coke, judicial independence from executive control has been accomplished in England. The framers of our Constitution, impressed by this example, have fortified the cherished

value of the rule of law by incorporating provisions to insulate the judicature. *Justice becomes fair and free only if institutional immunity and autonomy are guaranteed* (of course there are other dimensions to judicial independence which are important but irrelevant for the present discussion). *The exclusion of executive interference with the Subordinate Judiciary*, i.e., *grass-roots justice, can prove a teasing illusion if the control over them is vested in two masters viz., the High Court and the Government, the latter being otherwise stronger.* Sometimes a transfer could be more harmful than punishment and *disciplinary control by the High Court can also be stultified by an appellate jurisdiction being vested in Government over the High Court's administrative orders.* This constitutional perspective informed the framers of our constitution when they enacted the relevant Articles 233 to 237. *Any interpretation of administrative jurisdiction of the High Court over its subordinate limbs must be aglow with the thought that separation of the Executive from the Judiciary is a cardinal principle of our Constitution. However, we do* not pursue this question further since, in the present case, Government has agreed with and acted on the High Court's recommendation' and, moreover, the methodology of conflict resolution, when the view of the High Court is unpalatable to the Executive, falls to be directly considered in a different set of pending appeals." (Emphasis supplied).

It may be that the matter was not finally decided, but we can certainly take guidance from the observations of the learned Judge because of the soundness of the reasons stated in support of those observations.

(9) In N. S. Rao's case also, after reviewing the previous cases, it has been said that "the Governor has power to pass an order of dismissal, removal or termination on the recommendations of the High ourt which are made in exercise of the power of control vested in the High Court. The High Court of course under this control cannot terminate the services or impose any punishment on District Judges by removal or reduction. The control over District Judges is that disciplinary proceedings are commenced by the High Court. If as a result of any disciplinary proceedings any District Judge is to be removed from service or any punishment is to be imposed, that will be in accordance with the conditions of service." These observations clearly lead to the conclusion that the recommendation for

inflicting one of the two major punishments, that is, dismissal or removal from service is made by the High Court in the exercise of its power of control and thereafter the Governor cannot assume a superior or appellate power to scrutinise the findings and the recommendations of the High Court as if the High Court is an authority subordinate to him. It has been emphasised more than once that the High Court is not an authority subordinate to the Governor in any matter whatsoever. The High Court represents the third wing of the Government of which the Executive is another wing, with the Governor as the Common link. For this reason too, once the recommendation was made by the High Court in the present case that the petitioner should be removed from service, the Governor had no right to differ from that recommendation and refuse to pass that order on any consideration whatsoever.

(10) A Full Bench of this Court in *Inder Parkash Anand* v. *The State of Haryana and others* (4), had to decide whether the Government could issue a notice of retirement from service under Rule 5.32(c) of the Punjab Civil Services Rules, Volume II, against the recommendation of the High Court and it was observed that after a person is appointed to the Judicial Service of a State, he becomes subject to the control of the High Court in all matters, that is, administrative, judicial and pertaining to discipline, except that if an order of dismissal or removal has to be passed *qua* him, the competent authority to pass that order is the State Government. It was so held by their Lordships of the Supreme Court in *Nripendra Nath Bagchi's case* 2 (supra). In short, it was held that after a person is appointed to the Judicial Service of a State, the State Government becomes *functus officio* and the entire control-administrative, judicial and disciplinary-vests in the High Court. As long as that officer remains in service, all orders *qua* him in respect of his service have either to be passed by the High Court or by the State Government only on the recommendation of the High Court in respect of the matters over which the State Government has been given the jurisdiction under the provisions of the Constitution or the conditions of service governing the Judicial Service. The State Government on its own initiative cannot pass any order. In order to understand the ambit of the control of the High Court, we must imagine that there is a house of Judiciary into which a judicial officer is inducted by the order of the Government, but the moment he enters the portals of the house, he comes under the control of the High Court and

(4) I.L.R. (1972) 1 Pb. & Hr. 698.

till he remains in the house, the Government has no right even to peep in and find out how he is behaving or working. As long as he is in the house, it is for the High Court to decide all matters relating to his service, that is, confirmation on the successful completion of the period of probation, transfer, permission to cross the efficiency bar, and promotions to the Selection Grade in the time scale of the judicial officer concerned. If he misbehaves and the misbehaviour is of a serious type, punishment short of removal from service or dismissal from service, will be passed by the High Court. But once the High Court is satisfied that he is not a fit person to continue in the house, it has to inform the Governor of its views and to request that he should be taken out of the house in the same manner in which he was inducted in. The High Court can take him to the exit, but cannot push him out. It is at this stage that the Governor is to exercise his power to take him out of the house by passing a formal order in pursuance of which the officer has to go out and cannot thereafter remain in the house. The decision, that he must be taken out of the house of Judiciary, is for the High Court and High Court alone to make and the Governor cannot insist that he must be retained in the house even if the High Court is firmly of the opinion that he should not remain there. If this analogy be correct, then to borrow the language of Krishna Iyer, J., towards the end of paragraph 148 of the report in *Shamsher Singh's case* (1), quoted *in* extenso in an earlier part of this judgment, it can be said that in practice the last word in such a sensitive subject must belong to the High Court and the rejection of its advice shall ordinarily be regarded as prompted by oblique considerations vitiating the order and that it is immaterial whether the Governor or the Chief Minister or the Minister for Justice formally passes the order.

(11) As against this interpretation of Article 235 of the Constitution, the learned counsel for the petitioner and respondent No. 3, have strongly urged that power does not mean mere obligation and that when the power to dismiss or remove from service has been vested in the Governor under Article 311 of the Constitution and the Service Rules, the Governor alone has the right to find out whether the delinquent officer is guilty or not and what punishment he deserves. He can also exonerate the judicial officer if he is satisfied that on the evidence on the record he cannot be held to be guilty. I regret my inability to accept this submission. The power given to the Governor is to pass the order of dismissal from service or removal from service as recommended by the High Court. Article 311 of the Constitution has to be considered in harmony with Article 235 of the

Constitution and I have already given my reasons in an earlier part of the judgment in support of the plea that the Governor has merely to pass an order and not to adjudicate upon the matters. It is not unknown in the provisions of the Constitution that power to the President or the Governor is given only to pass an order in accordance with the advice of some other body. For example, in Article 103, the President has been given the power to decide whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of Article 102 of the Constitution and his decision is to be final. But before giving any decision on any such question, the President has been enjoined to obtain the opinion of the Election Commission and to act according to such opinion. This Article clearly means that the opinion on the question of disqualification will be that of the Election Commission and that the President will pass his order in accordance with that opinion that is, he cannot exercise his own mind in the matter and must abide by the opinion tendered by the Election Commission. A similar provision is made with regard to members of the State Legislatures in Article 192 of the Constitution and the Governor has been given the power to decide whether a member of the Legislature has become subject to any of the disqualifications mentioned in clause (1) of Article 191, but he has to give his decision in accordance with the opinion of the Election Commission. Article 217(3) gives the power to decide any question relating to the age of a Judge of a High Court to the President after consultation with the Chief Justice of India. While interpreting the phrase 'after consultation with the Chief Justice of India', Krishna Iyer, J., in *Shamsher Singh's case* (1) has made the observation that "in practice the last word in such a sensitive subject must belong to the Chief Justice of India, the rejection of his advice being ordinarily regarded as prompted by oblique considerations vitiating the order. In this view it is immaterial whether the President or the Prime Minister or the Minister for Justice formally decides the issue". The learned Judge emphasised that the purpose of providing consultation with the Chief Justice of India was in accordance with the cardinal principle of the Constitution to Preserve the independence of the Judiciary and if the consultation with the Chief Justice is obligatory, the last word must vest with him. Consultation is milder than recommendation and recommendation is milder than control and it, therefore, stands to reason that the control of the High Court, as enshrined in Article 235 of the Constitution, must be considered to be complete, sole and absolute so that any recommendation made by it, in exercise of that power, must be held binding on all the authorities that have to act in

accordance therewith including the Governor under Article 311 of the Constitution and the Service Rules. In this view of the matter, it is not necessary to decide whether Article 235 overrides Article 311 of the Constitution or *vice versa*. Both the provisions, being in the same Constitution, have to be worked in harmony and if that is possible, there is occasion to make one subject to the other. It may, however, be emphasised that Article 311 applies only to such cases in which the appointing authority is also the controlling authority and has the right to inflict all the punishments, whether minor or major and to initiate the departmental enquiries and deal with the case till the award of punishment. In the case of judicial officers, Article 311 has a limited application, that is, the orders of dismissal or removal from service are to be passed by the Governor, but the enquiries have to be held by the High Court.

(12) It has been stressed by the learned counsel for the petitioner and respondent No. 3, that if the Constitution makers intended that the Governor was not to exercise his own mind and had to pass the order as recommended by the High Court, a provision to that effect would have been expressly made in Article 235 or some other Article of the Constitution. It has been emphasised that in a Conference of the Judges of the Federal Court and the Chief Justices of High Courts held in March, 1948, it was noticed that no specific attention was paid to the subordinate judiciary and neither the Draft Constitution prepared by the Constitutional Adviser in 1947, nor that prepared by the Drafting Committee in 1948 contained any specific provision on the subject. The omission to provide specifically for the subordinate judiciary in the Constitution was prominently mentioned in the memorandum submitted as a result of that Conference to the Government with the observation that:—

> "So long as the subordinate judiciary, including the district Judges, have to depend on the provincial executive for their appointment, posting, promotion and leave, they cannot remain entirely free from the influence of members of the party in power and cannot be expected to act impartially and independently in the discharge of their duties. It is, therefore, recommended that provision be made placing exclusively in the hands of the High Courts the power of appointment and dismissal, posting, promotion and grant of leave in respect of the entire subordinate judiciary including the district judges."

It was because of that memorandum that the Drafting Committee inserted Chapter VI in Part VI of the Constitution, consisting of Articles 233 to 237, dealing with the subordinate Courts. The Supreme Court in *Nripendra Nath Bagchi's case* (2) (supra), dealt with this matter at great length and came to the conclusion that the 'control' was vested in the High Court to effecuate a purpose, namely, the securing of the independence of the subordinate judiciary and unless it included disciplinary control as well, the very object would be frustrated. The independence of the judiciary was also emphasised by the Supreme Court in *Jyoti Prakash Mitter* v. *The Hon'ble Mr. Justice H. K. Bose, Chief Justice of the High Court, Calcutta and another* (5) in paragraph 29 of the report, as under:—

> "There is considerable force in the plea which the appellant took at the initial stages of this controversy that if the Executive is allowed to determine the age of a sitting Judge of a High Court, that would seriously affect the independence of the Judiciary itself."

In *Chandra Mohan* v. *State of Uttar Pradesh and others* (6), it was observed as under:—

> "Till India attained independence, the position was that district judges were appointed by the Governor from three sources, namely, (i) the Indian Civil Service, (ii) the Provincial Judicial Service, and (iii) the Bar. But after India attained independence in 1947, recruitment to the Indian Civil Service was discontinued and the Government of India decided that the members of the newly created Indian Administrative Service would not be given judicial posts. Thereafter district judges have been recruited only from either the judicial service or from the Bar. There was no case of a member of the executive having been promoted as a district judge. If that was a factual position at the time the Constitution came into force, it is unreasonable to attribute to the markers of the Constitution, who has so carefully provided for the independence of the judiciary, an intention to destroy the same by an indirect method."

(5) A.I.R. 1965 S.C. 961.
(6) (1967) 1 S.C.R. 77.

In *The State of Assam and another* v. *Kuseswar Saikia and others* (7), the learned Judges observed thus:—

> "We are of the view that the change is likely to lead to an impairment of the independence of the judiciary at the lowest levels whose promotion which was vested by the Constitution in the High Court advisedly, will no longer be entirely in the hands of the High Court. The remedy for it is by amendment of the law to restore the former position."

It is thus evident that the Constitution makers, by making provisions in Articles 233 to 237 of the Constitution specifically for the subordinate Courts intended to ensure the independence of the Judiciary from the influence of the Executive. If that was the object, Article 235 must be given the same interpretation which effectuates that object. It was observed by Denning, L.J., in *Seaford Court Estates, Ltd.* v. *Asher* (8) as under:—

> "The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the Judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature. That was clearly laid down by the resolution of the Judges (Sir Roger Manwood,

(7) A.I.R. 1970 S.C. 1616

(8) 1949) 2 A E.L.R. 155.

(C.B., and the other barons of the Exchequer) in *Heydon's case* (9) and it is the safest guide today. Good practical advice on the subject was given about the same time by Plowden in his note to *Eyston* v. Studd (10). Put into homely metaphor it is this: A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

These observations were quoted with approval by the Supreme Court in *The State of Bihar and another* v. *Asis Kumar Mukherjee and others* (11) in paragraph 15: Taking the cue from these observations for the construction of Article 235, it must be said that the Constitution makers intended to and did vest the control of the District Courts and the Courts subordinate thereto in the High Court and made it a sole custodian of that control. If the Constitution makers were called upon to make a specific provision with regard to cases in which the Governor has to pass an order of dismissal from service or removal from service, it would certainly have been provided that the Governor would pass an order in accordance with the recommendation of the High Court on the subject. The independence of the Judiciary has been stated to be the cardinal principle of the Constitution, by the Supreme Court in various judgments referred to above and it, therefore, becomes apparent that complete disciplinary control over the subordinate judiciary vests in the High Court and the High Court has the right to propose the punishment on a delinquent officer who has been found guilty, after a due enquiry and after consideration of his explanation. This interpretation advances the object and purpose of making a separate provision with regard to subordinate Courts in Articles 233 to 237 of the Constitution and provision of control in the High Court in Article 235. Any other interpretation will impinge on the complete control of the High Court over the judicial officers and anomalous situations will arise as in the present case if an undesirable and unwanted judicial officer is thrust on the High Court for service. It will thus create a deadlock or stalemate and confrontation between

(9) (1584) 3 Co. Rep. 7 a.
(10) (1574) 2 Plowd 463.
(11) A.I.R. 1975 S.C. 192.

the Executive and the High Court. Since the impugned order, exonerating the petitioner from all charges and reinstating him, was not passed in accordance with the mandatory provision of the Constitution embodied in Article 235 of the Constitution, the order is void and *non est* being *ultra vires* Article 235 of the Constitution and the High Court was right in not giving effect to it.

(13) The second point for consideration is whether the Government was justified in seeking the advice of the Public Service Commission under Article 320(3)(c) of the Constitution. I have already pointed out above that the High Court is the sole custodian of the control over the subordinate judiciary, as has been emphasised by the Supreme Court in *Nripendra Nath Bagchi's case* (2) (supra). Consultation with the Public Service Commission in respect of the members of the Judiciary, in my opinion, is expressly ruled out by Article 235 of Constitution otherwise the Constitution makers would have provided whether the recommendation of the High Court or the advice tendered by the Public Service Commission would be binding on the Government in case there was conflict between the two. If the advice of the Public Service Commission is to prevail against the recommendation of the High Court, then the soleness of the authority of the High Court in matters of discipline, so much emphasised by their Lordships of the Supreme Court in *Nripendra Nath Bagchi's case* (2) will be whittled down. The observation that "the High Court is the sole custodian over the control in judiciary" means that the power has not to be shared with anybody else, much less with an advisory body like the Public Service Commission. In *Chandra Mohan* v. *State of Uttar Pradesh and others* (6) in relation to Article 233 of the Constitution, it was observed as under:—

> "The constitutional mandate is clear. The exercise of the power of appointment by the Governor is conditioned by his consultation with the High Court, that is to say, he can only appoint a person to the post of District Judge in consultation with the High Court. The object of consultation is apparent. The High Court is expected to know better than the Governor in regard to the suitability or otherwise of a person, belonging either to the 'judicial service' or to the Bar, to be appointed as a District Judge. Therefore, a duty is enjoined on the Governor to make the appointment in consultation with a body which is the appropriate authority to give advice to him. This mandate

can be disobeyed by the Governor in two ways, namely (i) by not consulting the High Court at all, and (ii) by consulting the High Court and also other persons. In one case he directly infringes the mandate of the Constitution and in the other he indirectly does so, for his mind may be influenced by other persons not entitled to advise him."

In that case the rules provided that the Governor could appoint a District Judge in consultation with the Selection Committee which consisted of two Judges of the High Court and the Judicial Secretary to Government. The High Court was practically reduced to the position of a transmitting authority of the lists of suitable candidates for appointment prepared by the Selection Committee. The only discretion left with it was to refuse to recommend for appointment all or some of the persons included in the lists sent to it by the Selection Committee. It could not scrutinise other applications which were screened by the Selection Committee nor could it recommend for appointment persons not found in the lists. On these acts it was held that the selection was bad as the High Court had not been consulted. The relevant observations are:—

"On the assumption that it is open to the Governor to make a provision under Article 309 for consultation with bodies other than the High Court, even so he cannot avoid consultation with the High Court directly or indirectly. As we have noticed earlier, under the Rules the consultation with the High Court is an empty formality. The Governor prescribes the qualifications, the Selection Committee appointed by him selects the candidates and the High Court has to recommend from the lists prepared by the said Committee. This is a travesty of the constitutional provision. The Governor, in effect and substance, does neither consult the High Court nor acts on its recommendations, but only consults the Selection Committee or acts on its recommendations. In that view also, the relevant rules are illegal and the appointments made thereunder are bad."

This case was followed in *Prem Nath and others* v. *State of Rajasthan and others* (12).

(12) A.I.R. 1967 S.C. 1599.

(14) The learned counsel for the petitioner strongly relied on a judgment of the Supreme Court in *Pradyat Kumar Bose* v. *The Hon'ble Chief Justice of Calcutta High Court* (13), wherein it was held that consultation with the Public Service Commission was not necessary in the case of the members of the High Court staff, who could be appointed by the Chief Justice and who had the authority to dismiss them and to frame rules pertaining to the conditions of service. They were not employees under the State Government and, therefore, Article 320 (3) (c) did not apply. From these observations it is emphasised by the learned counsel that in the case of the Judicial Service of the State under Article 234 of the Constitution, the power to appoint and the power to make rules prescribing the conditions of service vests in the Governor and he is the authority to dismiss or remove from service such a judicial officer and, therefore, the administrative control over the Judicial Service vests in the Governor and the members of the Service can be described as persons serving under the Government of the State. A pertinent observation has been made in this judgment that the phrase "persons serving under the Government of India or the Government of a State" seems to have reference to such persons in respect of whom the administrative control is vested in the respective executive Governments functioning in the name of the President or the Governor or of a Rajpramukh. After making this observation it is said that the officer and staff of the High Court cannot be said to fall within the scope of the above phrase because in respect of them the administrative control is clearly vested in the Chief Justice who, under the Constitution, has the power of appointment and removal and of making rules for the conditions of services. This observation does not mean that these are the only aspects of the administrative control. It has been authoritatively held by the Supreme Court that the complete administrative control in respect of the members of the Judiciary vests in the High Court and, therefore, the members of the Judicial Service, although belonging to the Civil Service of the State, do not serve under the State Government, but only in connection with the affairs of the State and, therefore, consultation with the Public Service Commission cannot be had in the case of disciplinary matters with regard to judicial officers.

(15) Lastly, reliance was placed on *Nripendra Nath Bagchi* v. *Chief Secretary, Government of West Bengal* (14) wherein it was

(13) A.I.R. 1956 S.C: 285.

(14) A.I.R. 1961 Cal. 1.

held that consultation with the Public Service Commission was necessary because it was a safeguard provided by the Constitution to the members of the Civil Service. This observation of P.B. Mukharji., J., in that judgment, should be deemed to have been impliedly overruled by the Supreme Court judgment in *Nripendra Nath Bagchi's case* (2) (supra), on an appeal against that judgment, in view of the observation that the sole custodian of the control over the Judiciary is the High Court. The observation in the Calcutta decision is, therefore, of no help to the learned counsel for the petitioner.

(16) The learned Advocate-General for the State has referred to the Haryana Public Service Commission (Limitation of Functions) Regulations, 1973, in which Regulations 4 to 6 enumerate the cases in which it is not necessary to consult the Public Service Commission and it is argued that the members of the Judicial Service are not mentioned therein. The previous regulations presumably contained similar provisions. The Public Service Commission has not to be consulted in regard to disciplinary matters when a member of the Judicial Service is involved because of the provision in Article 235 of the Constitution with regard to control. The State Public Service Commission is to be consulted by the State Government or an authority subordinate to it. The High Court, not being subordinate to the State Government, has not to consult the Public Service Commission when it inficts any punishment within its power. If that be so, the Governor has also not to consult the Public Service Commission when it has to pass the order of removal from service or dismissal from service with respect to a member of the Judicial Service. The order reinstating the petitioner into service was passed on the basis of the advice tendered by the Public Service Commission which was accepted by the State Government in preference to the advice and recommendation of the High Court. Since the Public Service Commission was an extraneous body and could not be consulted and was able to influence the decision of the punishing authority, the order suffers from a grave constitutional infirmity and is, therefore, liable to be declared *ultra vires* Article 235 of the the Constitution and hence void and *non est* on this ground too. The High Court was, therefore, right in disregarding that order and not implementing it by giving the posting orders to the petitioner.

(17) No other point has been argued.

(18) From the above discussion it follows that the petitioner cannot claim any relief on the basis of the order of the Governor

dated August 24, 1968, reinstating him in service and his petition is therefore, dismissed but without any order as to costs. The dismissal of this petition will, however, not bar the State Government from passing an order against the petitoiner in accordance with the recommendation of the High Court completely ignoring and keeping out of consideration the advice tendered by the Public Service Commission.

KOSHAL, J.—I agree.

SANDHAWALIA, J.—I agree.

JAIN, J.—I also agree.

(19) MAN MOHAN SINGH GUJRAL, J.—In this petition under Articles 226 and 227 of the Constitution of India filed by Shri B. R. Guliani, a member of the subordinate judiciary, claiming mandamus directing respondent No. 2 to post the petitioner as Subordinate Judge First Class-cum-Judicial Magistrate First Class and other consequential reliefs, the main legal issues claiming consideration and decision may be formulated as follows:—

1. The State Government being the authority to impose the punishment of dismissal or removal from service in view of the provisions of Article 311 read with Article 234 of the Constitution of India, is it bound to pass the order in terms of the recommendation made by the High Court in exercise of its control under Article 235 or is the State Government required to apply its own mind and come to an independent decision whether the order imposing the punishment of removal or dismissal in terms of Article 311(1) is to be passed or not ?

2. In view of the fact that control over the subordinate judiciary vests in the High Court under Article 235, is it open to the State Government to consult the Public Service Commission and be guided by its advice and whether the order passed by the State Government on the advice of the Public Service Commission would be a valid order ?

I have had the advantage of reading the judgment of my learned brother Tuli, J., with which the other learned brethren on the Bench

have concurred and I agree with the views expressed on the second point and the conclusion reached that the Public Service Commission could not be consulted and as the order of the punishing authority is based on extraneous consideration, which in this case is the advice of the Public Service Commission, the decision suffers from constitutional infirmity and is void and *non est*. Consequently I agree with the order proposed that the petition merits dismissal. I, however, have not been able to persuade myself that the finer nuances of the concept of control of the High Court over the subordinate judiciary in relation to the powers of the State Government emerging from the reasoning adopted were in tune with the undertones and overtones of inter-play of Articles 235 and 311 of the Constitution of India. Therefore, with all the respect for my learned brethren I have found it necessary to delineate, what I consider to be the exact scope and outer limits of the power of control vesting in the High Court under Article 235 of the Constitution, through by-ways of reasoning which would help in avoiding to tread on alien territory and to get into a scrape with the powers of the Governor under Articles 233, 234 and 311 of the Constitution.

(20) The facts necessary for the decision of this petition lie well beyond the pale of controversy, and having been marshalled succinctly in the judgment of B. R. Tuli, J., do not bear repetition. For our purpose, it would suffice to notice a few salient contours. At the relevant time the petitioner was posted as Subordinate Judge-cum-Magistrate First Class, Amloh. Some complaints having been made against the integrity of the petitioner, at first a fact-finding inquiry was held and this ultimately led to a departmental inquiry. During the pendency of the inquiry the petitioner was suspended by the State Government at the suggestion of the High Court. On receipt of the report of the Inquiry Officer and the explanation of the petitioner to the show-cause notice under Article 311 of the Constitution which was served through the State Government, the High Court made a recommendation to the State Government that the petitioner be removed from service. Instead of acting on the advice of the High Court and the material received from it, the Haryana Government, being of the opinion that the provisions of Article 320(3)(c) were attracted and a reference to the Haryana Public Service Commission was necessary, solicited the opinion of the Haryana Public Service Commission and, on its basis, decided to exonerate the petitioner and passed an order on the 24th August, 1968, reinstating him with immediate effect. Simultaneously the High Court was asked to consider the question of posting Shri

Guliani as he had been reinstated in service. In spite of this communication, no posting orders were issued by the High Court presumably for the reason that it considered the order of the State Government to be illegal and void, it having been based on the advice of the Haryana Public Service Commission which, in the opinion of the High Court, was extraneous material. The petitioner was still considered to be under suspension, as in the view of the High Court, no valid order of reinstatement had been passed. Finding himself in this unhappy position, the petitioner moved this Court through a writ petition under Articles 226 and 227 of the Constitution claiming a direction that a posting order be issued and the petitioner be paid full salary including the salary for the period of suspension. Other consequential orders were also sought in this petition.

(21) Before proceeding to examine the various aspects of the questions raised it would be pertinent to observe that both the issues relate to the determination of the true intent and scope of Article 235 of the Constitution of India and the nature of the power which the High Court draws from this provision in the field of control over the subordinate judiciary. In case, on an analysis of Article 235 in the light of the other relevant Articles of the Constitution, the conclusion reached is that the control of the High Court over the subordinate judiciary is complete in all respects and in all fields and includes the power to take final decision with regard to the infliction of punishment of dismissal or removal and that the State Government is merely to issue a formal order, the question of the necessity to consult the Public Service Commission would not arise, as the process of consultation in that situation would be an exercise in futility.

(22) In order to appreciate the respective contentions of the parties, it would be fruitful to examine the relevant provisions of the Constitution which, for facility of reference, have been set down below.

> "233. (1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.
>
> (2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate

or a pleader and is recommended by the High Court for appointment.

234. Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.

235. The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of District Judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

311. (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed but only on the basis of the evidence adduced during such inquiry :

Provided that this clause shall not apply—

(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person to reduce him in rank shall be final."

(23) The above provisions clearly highlight that so far as control over the district courts and courts subordinate thereto is concerned, the power is derived by the High Court from Article 235 and this power of the High Court is absolute in its own sphere and is not shared by any other agency. Neither under this provision nor under any other provision of the Constitution has the State Government any authority to exercise control over the working of the subordinate courts or to exercise disciplinary control over the judicial officers manning those courts. The State Government comes in contact with the subordinate judiciary only at two stages. The appointment of District Judges and members of the subordinate judiciary is made by the State Government, and being the appointing authority, the State Government is also the authority for passing the order of dismissal or removal from service. The appointment of District Judges is made by the State Government in consultation with the High Court while the subordinate Judges are appointed by the State Government in accordance with the rules framed in consultation with the High Court and the Public Service Commission. The power of appointment resting in the Governor which in turn leads to the power of dismissal or removal from service of judicial officers carries an implication of control in some measure of the State Government over the subordinate judiciary. Though ordinarily the question of exercising control would arise after a person has been injected into service but as, in the case of the members of the Subordinate Judicial Service, their promotion to Superior Judicial Service also rests with the Governor, the necessary inference would be that even at the initial stage the

State Government in a way does have some share, however small it may be, in the field of control over the members of the Subordinate Judicial Service. Therefore, for the decision of the spinal issue arising in this case, the demarcation of the respective areas of control and marking the ridge dividing the two is the task facing us from the outset.

(24) In so far as the power to pass order of dismissal or removal from service is concerned, both sides have taken extreme positions. On the one side, it is asserted that in this respect the final decision lies with the State Government and it is open to the Governor to either accept the findings and recommendation made by the High Court or to take action according to its own assessment of the findings of the inquiry and the explanation offered by the delinquent judicial officer and even to decide to completely exonerate him. With equal vehemence, it is urged on the other side, that the power of control vesting in the High Court under Article 235 carries the implication that the final decision to dismiss or remove a judicial officer from service rests with the High Court and the State Government only carries out the formality of passing an order in terms of the recommendations made by the High Court. Carrying the argument further, it is urged that just as in other matters the Governor is bound by the advice of the Council of Ministers, in matters relating to the subordinate judiciary the last word rests with the High Court. To place any other interpretation would, according to this view, impinge on the control of the High Court over the district courts and the courts subordinate thereto. To wean away from the opposite view-point, the incongruous results flowing from its acceptance was used as a bait. To cite an example, it was pointed out that, if the interpretation placed by the petitioner is accepted, the High Court would have the power to hold an inquiry against a judicial officer and, after finding him guilty impose any punishment other than removal or dismissal and that order would be final and binding, but, on the other hand, if on that very material, after coming to the conclusion that the officer was guilty of misconduct, the High Court were to recommend to the State Government for his dismissal or removal, the State Government could not only conclude that the case was not one for dismissal or removal but could completely exonerate the judicial officer and thus take away the right of the High Court even to impose one of the minor punishments. This, it is argued, could not have been the intention of the framers of the Constitution and it is consequently sought to be urged that the only harmonious way in which

Articles 235 and 311 could be interpreted is to accept that the final authority to take the decision in departmental proceedings rests with the High Court, leaving it for the Governor to pass a formal order in terms of the High Court's decision to impose one of the major punishments. Continuing this argument, it was asserted that, if the petitioner's interpretation was accepted, it would result in dual control which in turn would create situations causing confusion and uncertainty in judicial services and also affect the independence of the judiciary, to preserve which Article 235 had been introduced.

(25) Having projected the opposing view-points in broad outlines, the stage is now set for embarking on a close scrutiny of these arguments and for this purpose the relevant provisions of the Constitution and the judicial decisions interpreting the same would provide useful guide-lines. In the case of the subordinate judiciary the authority in which the control vests is different from the one which has the power to appoint and also to dismiss or remove from service while such duality of control does not exist in the case of the other services. Does this distinction place the subordinate judiciary on a different footing so far as the applicability of Article 311 is concerned ? The answer to my mind appears to be in negative, as there is nothing in the language of Article 311 to be even remotely suggestive of such an interpretation. To hold otherwise would be to imply that Article 311 is subject to Article 235, for concluding which there is no basis.

(26) It is an accepted principle of interpretation that when two provisions in a statute deal with the same subject, one of which is specific or special in character, and the other of a general sweep and applicability, the special qualifies the general and ought to be applied in preference to and unaffected by the general one. Viewed from this stand-point, it would appear that Article 235 is of a general character inasmuch as it relates to the control of the High Court over the subordinate courts in all spheres including not only control over the day-to-day working of the courts but also disciplinary and administrative control. On the other hand, Article 311 is only concerned with dismissal or removal of a Government servant to whichever wing or department he may belong. In relation to Article 235, Article 311, is, therefore, a special provision dealing with the imposition of major punishments mentioned therein. This being the relative position, if ever a conflict arises

between Article 235 and 311, the former would have to be interpreted in a manner so as to leave the applicability of Article 311 unaffected.

(27) It is now well-settled that neither Article 309 nor Article 310 controls Article 311 and, in fact, the scope and effect of Article 310(1) has to be limited in regard to cases falling under Article 311(2) and the rule-making authority envisaged in Article 309 cannot be exercised in a manner so as to curtail or affect the rights granted to a public servant under Article 311(2). This emerges from the decisions of the Supreme Court in *Jagannath Prasad Sharma* v. *The State of Uttar Pradesh and others* (15), and *Moti Ram Deka and others* v. *General Manager, North-East Frontier Railway and others* (16). In the first of these cases, one of the rules relating to disciplinary proceedings provided that the Governor was enjoined to pass an order of punishment in terms of the recommendation of the Tribunal and it was held that to the extent that this rule required the Governor to accept the recommendation of the Tribunal as binding, the rule was inconsistent with the Constitution, as under Article 311(2) the officer concerned was entitled to reasonable opportunity to show cause, to the satisfaction of the Governor, against the action proposed to be taken in regard to him. From the ratio of this decision, it would necessarily follow that notwithstanding the power of control which the High Court has under Article 235, such a construction cannot be placed on it which would have the effect of depriving the judicial officer of the right to a reasonable opportunity to show-cause to the satisfaction of the appointing authority when the question of the imposition of the punishment of dismissal or removal from service arises, as otherwise it would amount to a violation of Article 311. The order that the Governor passes under Article 311 is not merely a formal order but an order based on an appreciation of the material placed before him by the agency which had held the departmental inquiry. In the case of *Bachittar Singh* v. *State of Punjab and another* (17), the view taken was that departmental proceedings taken against a Government servant are just one continuous proceeding though there are two stages in it. Regarding these stages it was observed as follows :—

> "The first is coming to a conclusion on the evidence as to whether the charges alleged against the Government

(15) A.I.R. 1961 S.C. 1245.
(16) A.I.R. 1964 S.C. 600.
(17) A.I.R. 1963 S.C. 395.

servant are established or not and the second is reached only if it is found that they are so established. That stage deals with the action to be taken against the Government servant concerned. Both these stages are equally judicial. Therefore, this stage of the proceeding is no less judicial than the earlier one. Consequently any action decided to be taken against a Government servant found guilty of misconduct is a judicial order and as such it cannot be varied at the will of the authority who is empowered to impose the punishment. Indeed, the very object with which notice is required to be given on the question of punishment is to ensure that it will be such as would be justified upon the charges established and upon the other attendant circumstances of the case. It is thus wholly erroneous to characterise the taking of action against a person found guilty of any charge at a departmental enquiry as an administrative order."

The above observations leave no manner of doubt that at the second stage of departmental proceedings when action is to be taken against a Government servant the appropriate authority has to pass an order based on judicial approach and not merely a formal order. To hold that while passing such an order whether it is termed judicial or administrative, the Governor is merely to act on the recommendation of the High Court without applying his own mind would be rendering the provisions of Article 311 nugatory and depriving the Government servant of its protective shield. The construction sought to be placed on Article 311 by the first respondent would have the effect of depriving Article 311 of substance and turning it to an empty shell. I find myself unable to accept this as a correct view of the safeguard sought to be created through Article 311. Such a view of this provision can only be projected if it can be canvassed that the power of appointment of judicial officers in fact and substance also rests with the High Court, inasmuch as the Government is bound to pass an order of appointment of judicial officers on the recommendation of the High Court. At no stage was this view commended for acceptance and, in fact having regard to the following observations of the Supreme Court in *The State of Assam and another* v. *Kusewar Saikia and others* (7), such an argument is not available—

"It means that appointment as well as promotion of persons to be District Judges is a matter for the Governor in consultation with the High Court and the expression

'District Judge' includes an Additional District Judge and an Additional Sessions Judge. District Judges may be directly appointed or may be promoted from the subordinate ranks of the judiciary. The article is intended to take care of both. If the promotion is from the junior service to the senior service, it is a 'promotion' of a person to be District Judge which expression includes an Additional District Judge."

(28) On behalf of the petitioner, it was canvassed before us that though there was no clear judicial pronouncement dealing with the extent and nature of the control of the High Court envisaged by Article 235 in relation to the power of the appointing authority, to dismiss or remove a judicial officer, contained in Article 311 of the Constitution, but there are indications in some of the decided cases that could plausibly and reasonably lead to the conclusion that, though the State Government was bound to give due regard to the recommendations of the High Court and was normally expected to act upon it, but the final decision rested with the State Government and it was not bound in every case to issue an order of dismissal or removal, if so recommended by the High Court. Reference in this connection was first made to *Mohammad Ghouse* v. *The State of Andhra* (18). In this case an inquiry was held by one of the Judges of the High Court against the appellant who was a subordinate Judge. The inquiry related to certain charges of bribery and delaying of judgments, etc., and at a meeting of the Judges it was decided that the proper punishment was of dismissal regarding the charge of bribery and removal from service regarding the other charges. The appellant was then placed under suspension and a report was sent to the Government for taking action, on the basis of which a notice was issued to the appellant to show cause why he should not be dismissed or removed from service. Before the Supreme Court, one of the arguments advanced was that, as the Governor was the appointing authority of the appellant, the order of suspension passed by the High Court was violative of Article 311. While repelling this contention, it was ruled that it was the appropriate authority under Article 311 that was proceeding to take action against the appellant and it was for that authority to pass the ultimate order in the matter. The decision proceeded on the assumption that it was the Governor who was to pass the final order under Article 311. Again in *Mohammad Ghouse* v. *State of Andhra Pradesh* (19), the decision of the main

(18) A.I.R. 1957 S.C. 246.

(19) A.I.R. 1959 A.P. 493.

question involved proceeded on the same assumption that the power to hold an inquiry into the conduct of a judicial officer vested in the High Court and the High Court was to determine provisionally the punishment which could be imposed upon judicial officer prior to his being afforded a reasonable opportunity of showing cause under Article 311 of the Constitution, but that the order was ultimately to be passed by the Governor. While challenging the order of dismissal passed against him, one of the contentions raised before the High Court was that the petitioner being a District Judge, the High Court was not competent to hold an inquiry against him and as such the inquiry by the High Court must be deemed to be a preliminary inquiry only and that in case action was sought to be taken against him on its basis the Government ought to have ordered another inquiry before holding the charges proved against him. While rejecting this contention it was observed as under:—

> "Therefore the High Court in exercise of its power of superintendence and control of the courts subordinate to it and by virtue of the rules having the force of law under the proviso to Article 309 read with Article 313, is vested with the power to hold an enquiry into the conduct of judicial officers and to determine provisionally the punishment which should be imposed upon them prior to their being afforded a reasonable opportunity of showing cause under Article 311 of the Constitution. In other words, there are two stages to an enquiry against a public servant; the first stage is when charges are framed and he is asked whether he requires an oral enquiry or to be heard in person. The first opportunity is afforded to him at this stage to contest the allegations against him. The second stage is after the findings have been reached when the person empowered to appoint him must give the delinquent a reasonable opportunity to show cause against the action proposed to be taken against him.
>
> The only purpose for which an enquiry under the Act could be made, *is to help the Government to come to a definite conclusion regarding the misbehaviour of a public servant and thus enable it to determine provisionally the punishment which should be imposed upon him*, prior to giving him a reasonable opportunity of showing cause, as is required under Article 311(2) of the Constitution. The essential element in the awarding of penalties and punishments

against public servants is not as to who conducts the enquiry, but whether the person has been given the opportunities referred to above and that the enquiry is fair and unbiased." (Emphasis supplied).

If the correct view of Article 235 had been that the High Court was to take the final decision even in the matter of imposing the punishment of dismissal or removal from service on judicial officers, as is now canvassed before us, the argument raised in *Mohammad Ghouse's* case would have been repelled on that ground and not on the ground that the High Court was to hold the inquiry in exercise of its power of control with a view to help the Government to come to a definite conclusion regarding misbehaviour of the judicial officer and further enable it to provisionally determine the punishment and to give a reasonable opportunity under Article 311(2) of the Constitution of India.

(29) This brings us to the consideration of the ratio of the decison of the Supreme Court in *The State of West Bengal and another* v. *Nripendra Nath Bagchi* (2), to which reference has been made by both parties and from some of the observations made therein both sides have sought to draw sustenance. At the relevant time, N. N. Bagchi was posted as Additional District and Sessions Judge at Alipore. Shortly before he was due to retire, he was placed under suspension and served with a charge-sheet, which ultimately led to an inquiry by Mr. B. Sarkar, Commissioner, Culminating in a report holding the charges proved. The State Government issued a notice asking him to show cause why he should not be dismissed, and as satisfactory cause could not be shown, an order of dismissal was passed. In this matter the Public Service Commission was consulted, but not the High Court. The order was quashed by a Full Bench of the Calcutta High Court, and in appeal before the Supreme Court filed by the State of West Bengal, one of the questions that came up for consideration was whether the Government or the High Court could order, initiate and hold inquiries into the conduct of District Judges. While interpreting Article 235 a reference was made to the process by which ultimately Articles 233 to 237 came to be included in the Constitution as distinct from the Chapter on Services and after the Chapter on High Courts and it was observed that in order to effectuate the independence of the subordinate judiciary the control of the subordinate Courts was placed with the High Court. It was further observed that "the High Court is made the sole custodian of the control over the judiciary." Basing himself

on these observations, it was contended with considerable vehemence on behalf of the first respondent that, in case the final decision regarding dismissal or removal of a judicial officer was to vest in the State Government, it would impinge on the soleness of the control of the High Court over the subordinate judiciary. Support for this argument was sought from the further observations in *N. N. Bagchi's* case that the "control which is vested in the High Court is complete control." In formulating this argument the respondents' learned counsel has fallen into the very trap against which a caution was sounded by the Supreme Court in *State of Orissa* v. *Sudhansu Sekhar Misra and others* (20), wherein accepting the rule laid down in *Quinn* v. *Leathem* (21), it was pointed out that a decision is only an authority for what it actually decides and what is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. A further warning was given that it was not a profitable task to extract a sentence here and there from a judgment and to build upon it. With regard to the observations in *N. N. Bagchi's* case that the High Court was made the sole custodian of the control over the subordinate judiciary, these were considered by the Supreme Court in *Sudhansu Sekhar Misra's case* (20) supra in the following words:—

> "Now let us consider the ratio of the decisions in *Nripendra Nath Bagchi's case* (2) *and Ranga Mahammad's* case (22). In *Bagchi's case* (2), this Court laid down that the word "control" found in Article 235 includes disciplinary jurisdiction as well. The only question that fell for decision in that case was whether the government of West Bengal was competent to institute disciplinary proceedings against an additional district and sessions judge. This court upheld the decision of the High Court of Calcutta holding that it had no such jurisdiction. That was the single question decided in that case. It is true that in the course of the judgment, this court observed that the High Court is made the sole custodian of the control of the judiciary, but that observation was made only in the context of the question that arose for decision."

(20) A.I.R. 1968 S.C. 647.
(21) 1901 A.C. 495.
(22) A.I.R. 1967 S.C. 903=1967—1 SCR 454.

Even otherwise, there are clear indications in *N. N. Bagchi's* case that the complete control which solely vested in the High Court related to power other than the power of the Government in the matter of appointment (including dismissal and removal) and posting and promotion of district judges. The following observations in *Bagchi's* case, which lend support to this conclusion, may be read with advantage:—

> "This argument was not presented in the High Court and does credit to the ingenuity of Mr. Sen, but it is fallacious. *That the Governor appoints District Judges and the Governor alone can dismiss or remove them goes without saying. That does not impinge upon the control of the High Court. It only means that the High Court cannot appoint or dismiss or remove District Judges.* In the same way the High Court cannot use the special jurisdiction conferred by the two provisos. The High Court cannot decide that it is not reasonably practicable to give a District Judge an opportunity of showing cause or that in the interest of the security of the State it is not expedient to give such an opportunity. This the Governor alone can decide. *That certain powers are to be exercised by the Governor and not by the High Court does not necessarily take away other powers from the High Courts.* The provisos can be given their full effect without giving rise to other implications. It is obvious that if a case arose for the exercise of the special powers under the two provisos, the High Court must leave the matter to the Governor. In this connection we may incidentally add that we have no doubt that in exercising these special powers in relation to inquiries against District Judges, the Governor will always have regard to the opinion of the High Court in the matter. This will be so whoever be the inquiring authority in the State. But this does not lead to the further conclusion that the High Court must not hold the enquiry any more than that the Governor should personally hold the enquiry.

> There is, therefore, nothing in Article 311 which compels the conclusion that the High Court is ousted of the jurisdiction to hold the enquiry if Article 235 vested such a power in it. In our judgment, the control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment

(including dismissal and removal) and posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal, subject however to the conditions of service, and a right of appeal if granted by the conditions of service, and to the giving of an opportunity of showing cause as required by clause (2) of Article 311 unless such opportunity is dispensed with by the Governor acting under the provisos (b) and (c) to that clause. The High Court alone could have held the enquiry in this case. To hold otherwise will be to reverse the policy which has moved determinedly in this direction." (Emphasis supplied).

In the above observations a clear distinction is drawn between the powers of the Governor to appoint district judges in terms of Article 233 and subordinate judges in terms of Article 234 and to dismiss or remove a judicial officer under Article 311 and the control which the High Court exercises in spheres other than these. No doubt in the above case the question whether the control vesting in the High Court included the power to take final decision regarding dismissal or removal did not directly arise, but having regard to the observations that the Governor alone could dismiss or remove district judges and that this did not impinge on the control of the High Court, it cannot be plausibly canvassed that the power of the Governor was limited to the passing of a formal order of dismissal or removal on the basis of the decision which the High Court had reached. To me, therefore, there seems to be no escape from the conclusion that the observations in *Bagchi's* case in regard to the extent of the powers of the High Court under Article 235 do offer a prop to the case of the petitioner that the power of dismissal or removal rests with the State Government.

(30) It may be mentioned at this stage that the parties are agreed that Article 311(2) is equally applicable to judicial officers and that they are also entitled to two opportunities before disciplinary action is taken against them. There is also no dispute that at the stage of the second opportunity it is open to the officer to cover the whole ground and to plead that no case has been made out against him for taking any disciplinary action and then to urge, in case he fails to substantiate his innocence, that the action proposed to be taken against him is either unduly severe or not called for. The only controversy is as to whether the High Court

alone is to consider the explanation of the officer and to come to a conclusion whether any case has been made out for taking disciplinary action and, if so, what punishment can be appropriately imposed or whether the second opportunity was to be provided by the Governor who was to consider the explanation in the light of the recommendations of the High Court.

(31) In *Chandramouleshwar Prasad.* v. *The Patna High Court and others* (23), the implications of the consultation which the Governor is required to have with the High Court in the matter of appointment of district judges were considered and it was observed that the underlying idea of Article 233 was that the Governor should make up his mind after there has been a deliberation with the High Court. It was, however, made clear that this did not mean that the Governor must accept whatever advice was given by the High Court and all that this Article required was that the "Governor should obtain from the High Court its views on the merits or demerits of the persons among whom the choice of promotion or appointment was to be limited." Drawing support from these observations, it was contended on behalf of the petitioner that even in matters of dismissal or removal from service, the advice of the High Court could not be binding, as the power of dismissal or removal from service of a judicial officer was drawn from the power of appointment which the State Government has under Articles 233 and 234. It was further pointed out that whereas there was constitutional limitation on the power of the Governor under Article 233, making consultation with the High Court obligatory, there was no such limitation under Article 311 and that as the views of the High Court in matters of dismissal or removal of a judicial officer were only to be taken into consideration by the State Government because the control over the district courts and courts subordinate thereto vested in the High Court, the recommendations in this respect could not be binding. The contention appears to be well-founded.

(32) It may also be added that the power to initiate and conduct departmental inquiries against judicial officers which vests in the High Court does not carry the necessary implication that the High Court alone could take the final decision to dismiss or remove from

(23) A.I.R. 1970 S. C. 370.

service a judicial officer and was the appropriate authority to exercise, in substance, the powers under Article 311(1) of the Constitution. In *State of Madhya Pradesh and others* v. *Sardul Singh* (24), it was ruled that a guarantee under Article 311(1) did not in itself include a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be conducted by the authority mentioned in the Article. It was pointed out that Article 311 in terms did not require that the authority empowered under this provision to dismiss or remove an officer should itself initiate or conduct the inquiry preceding the dismissal or removal of an officer or even that the inquiry should be conducted at its instance. The ratio of this decision would also be available to repel the converse proposition that the authority which has the power to initiate and conduct the inquiry must necessarily have the power to pass effective orders of dismissal or removal from service. This conclusion would also flow from the decision of the Supreme Court in *A.N.D.' Silva* v. *Union of India* (25), wherein it was held that neither the conclusion on the evidence nor the punishment which the inquiring authority may regard as appropriate is binding on the punishing authority and that it was for the punishing authority to propose the punishment and to impose it and that this power was unrestricted. Consequently it is open to the learned counsel for the petitioner to press into service the ratio of the above decisions in support of his arguments. It may be relevant at this stage to refer to another argument raised by Mr. Anand Saroop appearing on behalf of the first respondent that the observations in *Sardul Singh's* case or *D'Silva's case* (25) would not be attracted in the case of judicial officers, as there is a clear distinction in this respect between these officers and other civil servants inasmuch as in the case of other Government servants the punishing authority is always the authority which exercises control over their work and conduct whereas in the case of judicial officers the control vests in the High Court and only the power of appointment, dismissal and removal is with the State Government. The precise argument is that, in view of this power of control vesting in the High Court under Article 235, a different interpretation on the powers of the appointing authority under Article 311(1) is to be placed in the case of judicial officers from the one in the case of other Government servants. The basis of this argument is that, as Articles 233 to 237

(24) 1970 S.L.R. 101.

(25) A.I.R. 1962 S.C. 1130.

were introduced to ensure the independence of the judiciary, the extent of control in Article 235 be interpreted in a manner which would support this purpose and not in a way which would negative this object. Support for adopting this construction was sought from *Firm Amar Nath Basheshar Dass* v. *Tek Chand* (26) wherein the following observations occur:—

> "Although Courts are not concerned with the policy of the Legislature or with the result of giving effect to the language of the statute, it is their duty to ascertain the meaning and intendment of the Legislature. In doing so, Courts will always presume that the impugned provision was designed to effectuate a particular object or to meet a particular requirement and not that it was intended to negative that which it sought to achieve."

No doubt Article 235 was designed to effectuate the desirable objective of the independence of the judiciary, but the other connected Articles, namely, Articles 233, 234 and 311 clearly and unequivocally provide the limits of the sphere within which this power of control was to be exercised. It can be plausibly concluded that the power of control would extend to other spheres only. The observations in *N. N. Bagchi's* case, to which reference has already been made would clearly negative the contention of Mr. Anand Saroop and would indicate that the laudable objective of the independence of the judiciary was accepted to the extent that it was not inconsistent with the powers of the State Government under Articles 233, 234 and 311 of the Constitution. While drawing up Articles 233, 234 and 311, had the intention been to place effective control even in matters of appointment, dismissal or removal of district judges or judges subordinate to them in the High Court, such a legislative intent could have been clothed in appropriate language without any difficulty. The matter becomes further obvious if a reference is made to the recommendation made by the conference of the Judges of the Federal Court and the Chief Justices of High Courts held in March, 1948, wherein it was "recommended that provision be made placing exclusively in the hands of the High Courts the power of appointment and dismissal, posting, promotion and grant of leave in respect of the entire subordinate judiciary including the district judges (The Framing of India's Constitution:

(26) A.I.R. 1972 S.C. 1548.

B. Shiva Rao, page 508)." Though these recommendations were accepted by the Drafting Committee but ultimately the drafts were modified and this led to the framing of Articles 233 to 237 of the Constitution as therein stated. The legislative intent behind these provisions is, herefore, clear, and having ascertained the meaning and intendment of the legislature, it is the duty of the Courts to give effect to it without having any concern with the policy of the legislature or with the result of giving effect to the language of the statute, as was affirmed in *Firm Amar Nath Basheshar Dass's case* (26) supra. It is not possible to presume that having placed the power of appointment of district judges and other judicial officers in the hands of the Governor the legislature was not conscious that this power would in turn carry the power of dismissal or removal from service, as envisaged in Article 311(1), especially when in the resolution of the Conference of the Judges of the Federal Court and the Chief Justices of the High Courts, the desirability of placing the power of appointment, dismissal and removal of judicial officers in the hands of the High Court was pointedly brought to the notice of the framers of Constitution.

(33) This brings us to the consideration of the judgments of the Supreme Court in *Shamsher Singh* v. *State of Punjab and another* (1) and *The High Court of Punjab and Haryana, etc.* v. *The State of Haryana and others* (3), as reference has been made to some of the observations in these cases. In the first of these cases, both the appellants were members of the Punjab Civil Service (Judicial Branch) and their probation had been terminated by two different orders of the Governor of Punjab on the recommendation of the High Court. The principal question which had arisen for decision in this case was whether under Article 234 of the Constitution the appointment as well as termination of the services of the Subordinate Judges was to be made by the Governor personally or on the aid and advice of the Council of Ministers. While considering this spinal issue, Krishna Iyer, J., made the following observations:—

> "In the light of the scheme of the Constitution we have already referred to, it is doubtful whether such an interpretation as to the personal satisfaction of the President is correct. We are of the view that the President means, for all practical purposes, the Minister or the Council of Ministers as the case may be, and his opinion, satisfaction or decision is constitutionally secured when his

> Ministers arrive at such opinion, satifaction or decision. The independence of the Judiciary, which is a cardinal principle of the Constitution and has been relied on to justify the deviation, is guarded by the relevant Article making consultation with the Chief Justice of India obligatory. In all conceivable cases consultation with that highest dignitary of Indian Justice will and should be accepted by the Government of India and the Court will have an opportunity to examine if any other extraneous circumstances have entered into the verdict of the Minister, if he departs from the counsel given by the Chief Justice of India. In practice the last word in such a sensitive subject must belong to the Chief Justice of India, the rejection of his advice being ordinarily regarded as prompted by oblique considerations vitiating the order. In this view it is immaterial whether the President or the Prime Minister or the Minister for Justice formally decides the issue."

Transposing the latter part of the observations relating to the consultation with the Chief Justice of India under Article 217 (3) to the field of the control vesting in the High Court under Article 235 in relation to the power of the Governor to dismiss or remove a member of the subordinate judiciary, it was canvassed on behalf of the first respondent that the opinion of the High Court in matters of dismissal or removal of a member of the subordinate judiciary which is tendered in exercise of the power of control would be binding on the Governor and that it would be of no consequence if the formal decision is taken by the Chief Minister or the Minister for Justice. While considering this aspect, it would be worthy of notice that the question whether the Governor was bound to accept the High Court's recommendation did not directly arise in this case and was in fact shelved for decision in some other appeal pending before the Supreme Court as appears from the following observations—

> "However, we do not pursue this question further since, in the present case, Government has agreed with and acted on the High Court's 'recommendation' and moreover, the methodology of conflict resolution, when the view of the High court is unpalatable to the Executive, falls to be directly considered in a different set of pending appeals."

leaving this apart, in the observations referred to above it was not intended to take a different view of the jurisdiction of the President under Article 217 (3) which clothed him with the power to determine the age of a judge finally from what had been expressed by the Supreme Court in this regard in *Jyoti Prokash Mitter* v. *The Hon'ble Chief Justice, High Court, Calcutta and another,* (5) and *Union of India* v. *Jyoti Parkash Mittar,* (27). It was not intended to convey that as a matter of law the advice of the Chief Justice would be binding, but that in all conceiveable cases the advice would be accepted by the Government of India. If a departure was made from the advice given by the Chief Justice, ordinarily it would be regarded as based on extraneous considerations if an occasion arises for the Courts to examine the circumstances which necessitated the departure. It would not be out of place to mention here that consultation between the two wings of the Government, especially the executive and the judiciary, is not only provided in Article 217 (3) but also in some other Articles of the Constitution including Article 233. The true scope of the nature of the consultation required under Article 233 having already been settled by the Supreme Court in *Chandramouleshwar Prasad's case* (23), a departure from that interpretation could not have been intended. I am, therefore, unable to persuade myself that the observations of Kirshna Iyer, J., in *Shamsher Singh's case* (1) advance the case of the first respondent in any manner or help in resolving the conflict in the present case.

(34) Reference on behalf of the first respondent was then made to para 78 of *Shamsher Singh's case* (1), wherein Ray, C.J. had made the following obervations:—

> "The Governor will act on the recommendation of the High Court. That is the broad basis of Artical 235."

In *Shamsher Singh's case* (1) the matter under consideration was the effect of the recommendation of the High Court in a matter relating to the termination of the probation of a judicial officer which exclusively fell within the competence of the High Court and the above observations would, therfore, not help while resolving the conflict in the matter of dismissal or removal from service of a judicial

(27) A.I.R. 1971 S.C. 1093.

officer. Moreover, only the broad basis of the power of control has been stated and not its detailed implications especially in relation to Article 311.

(35) In the second case [referred to as *N. S. Rao's case* (3)] the question before the Supreme Court was whether the confirmation of a District and Sessions Judge was to be made by the High Court or the Governor and while considering this matter the following observations were made by Ray, C.J., who delivered the judgment on behalf of the Court:—

> "The Governor has power to pass an order of dismissal, removal or termination on the recommendations of the High Court which are made in exercise of the power of control vested in the High Court. The High Court of course under this control cannot terminate the services or impose any punishment on District Judges by removal or reduction. The control over District Judges is that disciplinary proceedings are commenced by the High Court. If as a result of any disciplinary proceedings any District Judge is to be removed from service or any punishment is to be imposed that will be in accordance with the conditions of service."

Though in the above case the exact scope of the recommendations of the High Court made in exercise of the power of control regarding dismissal or removal of a judicial officer was not expressly considered, but what seems to be implied in the above observations is that the recommendations of the High Court, though entitled to the highest consideration by the Governor and even to their acceptance in almost all cases, would yet not be binding on the Governor in the sense that a departure therefrom would be violative of Article 235.

(36) Only one more argument of the first respondent remains to be considered, which may be formulated thus. In case it is held that it is open to the Governor at the stage of the second opportunity to come to the conclusion that no case has been been made out against the delinquent officer for taking any disciplinary action in spite of the recommendation of the High Court suggesting dismissal or removal from service, it would impinge on the control of the

High Court envisaged in Article 235, as in that situation the High Court would not be in a position to even impose the minor punishment which otherwise it could have done if it had not recommended for the imposition of one of the major penalties. A harmonious construction, keeping in the forefront the Principle of the independence of the judiciary, would dispel the cloud and resolve the absurdity suggested above. Under Article 311(1) the Governor being the appointing authority of the judicial officers can only pass an order of dismissal or removal from service and in a case where for any reason such an order is not passed, it would only imply that the circumstances did not warrant the passing of such an order and that the proposed action was found not to have been called for. Even after the passing of such an order it would be open to the High Court to consider the question whether the circumstances justified the imposition of any of the minor punishments and in coming to a conclusion on this point the High Court need not be influenced that the Governor had found that no case at all had been made out for taking disciplinary action. Even if this method of conflict resolution is not accepted, the matter can be looked at from another stand-point. The High Court has the jurisdiction to impose one of the minor punishments after the first stage of the inquiry is over, but if it does not take necessary steps in that direction and decides to make a recommendation to the Governor to impose the penalty of dismissal or removal after considering the explanation of the delinquent officer, the matter then passes beyond the pale of control which vests in the High Court and falls within the jurisdiction of the Governor to decide in accordance with Article 311 of the Constitution. The exercise of this power by the Governor will not imply an encroachment on the power of control which vests in the High Court, as the dismissal or removal relates to conditions of service. This view finds support from the ratio of the decision of the Full Bench of the Orissa High Court in *Registrar of Orissa High Court* v. *Baradakanta Misra and another* (28). In this case the scope of the power of control which vests in the High Court under Article 235 of the Constitution had arisen for consideration, and while examining whether an appeal against the decision of the High Court in disciplinary proceedings could lie outside the High Court or not, it was noticed as follows:—

> "It was contended by the learned Advocate-General that some checks and balances have been provided under the Constitution and provision of a right of appeal to the Governor

(28) A.I.R. 1973 Orissa 244.

would be such check and balance. We are unable to accept this argument. Checks and balances have been provided in Articles 233 to 235 in Chapter VI by providing that the power of dismissal and removal of District Judges and Munsifs vests in the Governor. So also those powers would vest in the Governor if Subordinate Judges and A.D.Ms. (J) are directly recruited and not appointed by promotion. This is sufficient check and balance. Though the ultimate power of dismissal and removal of District Judges has been conferred on the Governor, the control of the Subordinate Judiciary has been taken out of the powers of the Governor to effectuate the independence of the judiciary. The disciplinary proceeding is to be started by the High Court. When the High Court suggests punishment of dismissal or removal in certain cases the Governor may not agree with the proposal. But that would not amount to interference with the control vested in the High Court to impose other categories of penalties on District Judges, and dismissal or removal in cases of Subordinate Judges and A.D.MS (J) where they have been appointed by promotion. Rather, if the power of appeal is vested in the Governor there will be no checks and balances and the entire control will vest in the Governor. The independence of the judiciary will vanish."

In my opinion, these observations represent the correct view as to where lies the ultimate power of dismissal or removal of direct judges and other subordinate judicial officers. The contention that this would amount to an encroachment on the power of the control which vests in the High Court under Article 235 was also rightly negatived in the above case.

(37) Another facet of the contention raised on behalf of the first respondent is that this would impose a dual control on judicial officers, which in turn would hamper the smooth working of the judicial system. This aspect of checks and balances and of the duality of control was considered by a Full Bench of the Calcutta High Court in *Nripendra Nath* v. *Chief Secretary, Government of West Bengal* (14), in these words:—

"It is no doubt true that under Article 311 read with Articles 310, 233 and 234 of the Constitution the appointing authority in respect of a member of the judicial service of a

State being the Governor, the actual dismissing authority must also be the Governor. That only means that the actual order of dismissal has to be made by the Governor. It does not, however, mean that in supersession of the control of the High Court under Article 235 of the Constitution the Governor or the Government will be entitled to conduct disciplinary proceedings or set up disciplinary Tribunal apart from the High Court. Different Articles of the Constitution on the same subject should, wherever, possible, be read consistently and not in resistance with one another. The best reconciliation of these different articles of the Constitution will lie in the High Court conducting the disciplinary enquiry and sending its report at the conclusion of the enquiry to the Government to make the appropriate order of dismissal or removal. That the Government may not in a particular case accept the report and recommendation of the High Court exercising disciplinary jurisdiction cannot alter the interpretation of the Constitution when it provides dual authority first by vesting control in the High Court under Article 235 and secondly by resting appointment, tenure and dismissal with the Government under Articles 233, 234, 310 and 311 of the Constitution. This duality is not an unmixed evil but is an example of that wholesome constitutional principle of checks and balances so that no one institutoin can afford to be tyrannical in the exercise of its power and thereby ensuring the much needed security of public services in India."

The above observations provide a complete answer to both the aspects of the argument of the first respondent and, with respect, I adopt the reasoning expressed above in support of the conclusion that, by the exercise of the power of dismissal or removal by the State Government, the control of the High Court over the subordinate judiciary is not affected and the interpretation of Article 311 which enables it to have full effect and provide a safeguard to the public services envisaged by the Constitution is not open to challenge on the ground that it would lead to absurd results.

(38) In the light of the entire discussion made above, the position that finally emerges could be formulated thus. Keeping

the cardinal principle of the independence of the judiciary in the forefront, the control envisaged in Article 235 must be taken to be complete in all respects and in all fields including the power to initiate and hold departmental proceedings except to the extent it is limited by Articles 233, 234 and 311 of the Constitution. The power to initiate and conduct departmental proceedings further includes the power to impose punishment other than of dismissal or removal from service which power can only be exercised by the Governor acting under Article 311 of the Constitution. While exercising such a power the Governor has to proceed on the basis of the inquiry held by the High Court and the recommendation made by it in regard to the punishment to be imposed after the High Court has taken into consideration the explanation offered by the delinquent officer. These recommendations are made by High Court in the exercise of its power of control. Though the final decision in the matter of imposing the punishment of dismissal or removal from service is to be taken by the Governor but while arriving at the final conclusion the Governor must have due regard for the recommendation of the High Court and should in all conceivable cases act according to these recommendations. However, if in an isolated case the Governor takes a view, different from the one recommended by the High Court, it cannot be said in law that the order of the Governor is without jurisdiction. If a departure has been made by the Governor from the advice tendered by the High Court, it may be open to examination by a Court whether extraneous considerations are the basis of such a decision, but the decision is not open to challenge on the ground of lack of jurisdiction. The acceptance of this view does not cause any erosion in the power of conrtol vesting in the High Court and its only implication is that the principle of checks and balances envisaged in the Constitution would also come into play. Such an interpretation being in consonance with the objective which the framers of the Constitution had in view while providing a safeguard to the services under Article 311 would be the only appropriate one if a harmonious construction is to be placed on Articles 235 and 311 of the Constitution and neither of them is to be allowed to render the other nugatory. Looked at from this standpoint, the legality of the order of the State Government dated August 24, 1968, finding that no case for dismissal or removal of the petitioner had been made out is not open to challenge. As, however, this order is illegal on the ground that extraneous material has crept in and extraneous circumstances have entered into the verdict, it was rightly ignored by the High Court.

The result would be that no relief can be granted in this petition which would consequently merit dismissal.

BY THE COURT

(39) For the reasons recorded and the unanimous conclusion arrived at in the above judgments, this petition is dismissed, but the parties are left to bear their own costs.

..*K.S.K.*

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