does not cover the dyeing, bleaching and processing of third parties' cloth. To mention those authorities, these are *G. R. Kalkarni* v. *The State* (1), and *D. Ramaswami Proprietor, The Court Press Job Branch Salem* v. *State of Madras* (2). It may incidentally be observed that in *Messrs Hira Lal Jitmal* v. *Commissioner of Sales-Tax* (3), another Bench of the same High Court took a view which may seem, at first sight, to be slightly at variance with the view taken by the Bench which decided *G. R. Kalkarni* v. *The State* (1). But as already stated, this matter need not be pursued any further.

It appears to me that this petition is wholly misconceived and the proper course for the petitioner to adopt was to pursue the remedy given to him by the East Punjab Sales-Tax Act by way of appeal and, if possible, revision and/or reference to this Court. On the existing record it is not possible for us to give any relief to the petitioner and we have no option but to disallow this petition.

For the reasons given above, this petition fails and is hereby dismised with costs.

MEHAR SINGH, J.—I agree.

Mehar Singh, J.

B.R.T.

APPELLATE CIVIL.

Before A. N. Grover, J.

AMULYA KUMAR TALUKDAR,—*Appellant.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 342-D 1958.

1959

Dec., 9th

Indian Institute of Technology (Kharagpur) Act (LI of 1956)—Section 5—Whether offends against Article 14 of the Constitution of India—Constitution of India (1950)—Articles 309 and 310—Whether bar legislature to regulate the

(1) A.I.R. 1957 M.P. 45
(2) A.I.R. 1954 Mad. 980
(3) A.I.R. 1957 M.P. 37

conditions of service of employees—Schedule VII, List I, Entry 70—Powers of Legislature under.

Held, that the classification that has been made by section 5 of the Indian Institute of Technology (Kharagpur) Act, 1956, is founded on a rational basis. This section applies to all the permanent employees of the Institute. Thus the employees who were working in the Institute could form a class by themselves. As regards the question whether there exists a nexus between the basis of classification and the object of the Act, there can equally be no doubt that the Act was intended to provide for the incorporation of the Institute and matters connected therewith. The services of all the Government servants who were permanently employed there had to be put at the disposal of the Institute apparently because of their special experience and training for work in the Institute and because they were working there.

Held, that under Article 309 the legislature is competent to provide for and to regulate the conditions of service of Government employees by even altering them. Section 5 of the Institute of Technology (Kharagpur) Act expressly preserves and guarantees the same conditions as governed the petitioners before the enactment of that statute, but even if it puts an end to the service of the petitioners as Government employees, the plenary power of the legislature in this behalf conferred by entry 70 in List I of Schedule VII of the Constitution entitles the legislature to provide for any change or even for termination of service subject to Article 311 of the Constitution and other Articles. Surely Article 310 cannot stand in the way of the legislature regulating the conditions of service in any manner it chooses fit in its wisdom. The proviso appearing in Article 309 fortifies this conclusion as the President is empowered, in case of services and posts in connection with the affairs of the Union, to make rules regulating the conditions of service of persons appointed until provision in that behalf is made by or under an Act of Legislature under the aforesaid Article and any rules so made would be subject to the provisions of any such Act enated by the Legislature. It is noteworthy that section 5(2) of the Act makes the prior approval of the Visitor necessary for any alternation of terms and conditions of any employee by the Institute. That word has been defined by section 9 to mean the President of India. Thus

all the matters stated in sub-section (1) of section 5 with regard to conditions of service of the employee cannot be altered except after prior approval of the President.

Petition under Article 226 of the Constitution of India praying that :—

(*i*) *Rule on the Respondents to show cause why Writ in the nature of Mandamus shall not issue directing the respondents to forbear from giving effect to and/or from continuing giving effect to Section 5 of the Indian Institute of Technology (Kharagpur) Act.*

(*ii*) *Issue of such Writ if no cause or insufficient cause is shown to this Rule.*

(*iii*) *In the alternative, a Writ of Prohibition may issue directing the respondents to forbear from abusing jurisdiction vested in them by refraining from giving effect to Section 5 of the said Indian Institute of Technology (Kharagpur) Act, 1956.*

(*iv*) Ad interim *injunction in terms of the above prayer.*

(*v*) *Costs.*

(*vi*) *Any other order or orders as to Your Lordships may seem fit and proper. And your petitioner; as in duty bound, shall ever pray.*

SADHAN GUPTA, A. P. CHATTERJEE, K. R. CHAUDHRY, K. R. SHARMA, for Appellants.

JINDRA LAL, for Respondents.

ORDER

Grover, J.

GROVER, J.—This judgment will dispose of Civil Writs No. 342-D of 1958, and No. 343-D of 1958, in which the points raised are identically the same.

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Grover, J.

Amulya Kumar Talukdar petitioner was appointed by the Director, Indian Institute of Technology Kharagpur, before the Indian Institute of Technology (Kharagpur) Act, 1956, (hereinafter to be referred to as the Act) came into force, as a peon (General Central Services (Non-Gazetted Class IV). His post was declared permanent and pensionable and the place of duty was designated as the Indian Institute of Technology, Kharagpur, but it was mentioned that he might be required to serve under the Central Government anywhere in India,—*vide* Annexure 'A'. On 14th November, 1956, there was another office order issued by the Registrar, Indian Institute of Technology, Kharagpur, according to which the petitioner was confirmed in his post with effect from 30th September, 1954, against the post of office peon in the scale of Rs. 30—$\frac{1}{2}$—35.

The other petitioner, Amiya Kanta Datta, was originally appointed in the office of the Director-General, Industries and Supplies, New Delhi, on 23rd December, 1942, and his services were transferred from the Department to the Indian Institute of Technology and he was appointed with effect from 8th June, 1950, as a temporary Upper Division Clerk. Thereafter, he was confirmed in that post towards the end of March, 1951, with effect from 1st April, 1951. He was promoted as an assistant with effect from 1st April, 1951, in the scale of Rs. 160 to 450 per month and was confirmed in that post on or about 11th September, 1951.

The Act came into force on 15th September, 1956. According to the preamble, the Act was to declare the institution known as the Indian Institute of Technology, Kharagpur, to be an institution of national importance and to provide for its incorporation and matters connected therewith. Section 5 was in the following terms ;—

> "5. (1) Subject to the provisions of this Act, every person who is permanently

employed in the Indian Institute of Technology at Kharagpur immediately before the commencement of this Act shall, on and from such commencement, become an employee of the Institute and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same on the date of commencement of this Act if this Act had not been passed.

(2) Notwithstanding anything contained in sub-section (1) the Institute may, with the prior approval of the Visitor, alter the terms and conditions of any employees specified in sub-section (1) and if the alteration is not acceptable to such employee, his employment may be terminated by the Institute in accordance with the terms of the contract with the employee or, if no provision is made there in this behalf, on payment to him by the Institute of compensation equivalent to three months' remuneration.

(3) Every person employed in the Indian Institute of Technology at Kharagpur other than any such person as is referred to in sub-section (1) shall, on and from the commencement of this Act, become an employee of the Institute upon such terms and conditions as may be provided for in the statute, and until such provision is made, on the terms and conditions applicable to him immediately before such commencement."

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The main grievances of the petitioners were that by virtue of section 5 of the Act they would cease to be Government servants and would lose the lien which they had acquired under the Fundamental Rules to the posts to which they had been appointed. According to the petitioners, their services could not be terminated in the manner in which it had been done by a statutory enactment but under Article 309 of the Constitution it was the President alone who could terminate their services as Government employees subject to other safeguards in the Constitution. The validity of section 5 was also questioned on the ground that it was violative of Article 14 of the Constitution. The petitioners moved the High Court at Calcutta under Article 226 of the Constitution for appropriate writs and directions but the rule was finally discharged on 12th August, 1958, primarily on the ground that the Union of India did not reside within the jurisdiction of that Court. The petitioners have prayed for writs in the nature of mandamus directing the respondents to forbear from giving effect to and from continuing to give effect to section 5 of the Act and, in the alternative, for writs of prohibition directing the respondents to forbear from exercising jurisdiction vested in them by refraining from giving effect to section 5 of the Act and such other writs, orders or directions as the Court may deem fit and proper. Mr. Sadhan Gupta, the learned counsel for the petitioners, has rightly abandoned the prayer for writs of prohibition as admittedly there are no judicial or quasi-judicial proceedings pending in the present cases with regard to which a writ of prohibition will lie.

The first question that has been canvassed by Mr. Sadhan Gupta is that the essential result and effect of section 5 of the Act is to terminate the services of the petitioners under the Government and to transfer them to the Institute which is a

body corporate but which is not a Department of the Government and is quite a distinct and independent body. It is said that the wider avenues of promotion which were open to the petitioners as Government servants have been permanently blocked so far as the petitioners are concerned although according to the provisions of the Act they are to hold their office or service by the same tenure and at the same remuneration and upon the same terms and conditions, etc., which they would have held on the date of the commencement of the Act. It is further contended that under Article 310 of the Constitution it was the President of India alone who could terminate the services of the petitioners as Gvernment servants as they held office during the President's pleasure and this could not be done by the Parliament by legislation. It is also urged that under entry 70 in List 1 (Seventh Schedule) in the Constitution the Union Parliament could legislate with regard to Union Public services but that could not be done in derogation of the provisions of Article 310 which contains a clear provision that except as expressly provided by the Constitution, every member of a civil service of the Union, etc., holds office during the pleasure of the President which implies a right in the Government servant not to be removed by anyone else except the President and a power in the President alone to remove him or terminate his services.

The learned counsel for the Union submits that the legislation in question was perfectly competent under Article 309 read with Article 242 and entry 70 of List I (Seventh Schedule) already referred to before. It is pointed out that in substance and effect the services of the petitioners have not been terminated but on the other hand they are to hold office on the same tenure, at the same remuneration and upon the same terms and conditions and

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have the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as they would have held on the date of the commencement of the Act. There is thus no change of the conditions of service or of tenure.

On giving the matter due consideration, I am of the opinion that there is no force in the above contentions raised on behalf of the petitioners. Article 310 corresponds to the English rule that all service under the Crown in England is held at the pleasure of the Crown. In our Constitution the above rule is qualified by the words "except as expressly provided by the Constitution." Thus dismissal, removal and reduction in rank of civil servants must comply with the procedure laid down in Article 311. There are other Articles which deal with other offices and services, e.g., Article 314 relating to persons who had been appointed by the Secretary of State or by the Secretary of State in Council to a civil service of the Crown in India, Article 148 with regard to the office of the Comptroller and Auditor-General of India, Article 124 which provides for the tenure of Judges of the Supreme Court and Article 217 relating to the tenure of Judges of the High Court, etc., Article 309 empowers the legislature to regulate the conditions of service of persons appointed to public services subject to the provisions of the Constitution. That has reference to those Articles of the nature mentioned before which contain special provisions with regard to the tenure and conditions of service of persons holding particular offices. Under Article 309 the legislature would be competen to provide for and to regulate the conditions of service by even altering them, and although section 5 of the Act expressly preserves and guarantees the same conditions as governed the petitioners before the enactment of that statute, but

even if it puts an end to the service of the petitioners as Government employees, the plenary power of the legislature in this behalf conferred by entry 70 in List I would entitle the legislature to provide for any change or even for termination of service subject to Article 311 of the Constitution and other Articles. Surely Article 310 cannot stand in the way of the legislature regulating the conditions of service in any manner it chooses fit in its wisdom. The proviso appearing in Article 309 fortifies this conclusion as the President is empowered in case of services and posts in connection with the affairs of the Union to make rules regulating the conditions of service of persons appointed until provision in that behalf is made by or under an Act of legislature under the aforesaid Article and any rules so made would be subject to the provisions of any such Act enacted by the legislature. It is noteworthy that section 5(2) of the Act makes the prior approval of the Visitor necessary for any alteration of terms and conditions of any employee by the Institute. That word has been defined by section 9 to mean the President of India. Thus all the matters stated in sub-section (1) of section 5 with regard to conditions of service of the employee cannot be altered except after prior approval of the President. In fact, it is not the case of the petitioners that their existing terms and conditions of service have been altered to their prejudice but what they say is that they have ceased to be members of the public services of the Union and it is in that manner that the conditions of their service have been affected. This, as held before, the legislature was competent to do.

In view of what has been stated above, it is unnecessary to examine the argument whether the assent given by the President to the Indian Institute of Technology (Kharagpur) Bill had the effect

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of terminating the status of the petitioners as Government servants by the President. It is equally pointless to examine the ancillary argument raised on behalf of the petitioners that their lien had been terminated under the Fundamental Rules which could not ordinarily be done even with their consent.

The other contention on behalf of the petitioners that has been pressed is that section 5 is violative of Article 14 of the Constitution. It is urged that there was no justification whatsoever for depriving the Government employees who were working in the Institute of their status of Government servants and there has been discriminatory treatment because other Central Government employees are still members of the public services of the Union whereas the petitioners have ceased to be so. Reference has been made to Fundamental Rule 129 of section III according to which the petitioners could be treated as Government servants on foreign service. It is further pointed out that the State Government employees who are in the service of the Institute are still being treated as Government servants on foreign service and their status as Government servants has not been terminated. It is submitted that the classification made is not founded on any intelligible differentia and that differentia does not have a rational relation to the object sought to be achieved by the statute in question. There is hardly any force in these contentions. In the first place the classification that has been made is founded on a rational basis. Section 5 of the Act applies to all the permanent employees of the Institute. Thus these employees who were working in the Institute could form a class by themselves. As regards the question whether there exists a nexus between the basis of classification

and the object of the Act, there can equally be no doubt that the Act was intended to provide for the incorporation of the Institute and matters connected therewith. The services of all the Government servants who were permanently employed there had to be put at the disposal of the Institute apparently because of their special experience and training for work in the Institute and because they were working there. Thus it cannot be said that the tests that have been laid down by their Lordships of the Supreme Court in *Shri Ram Krishna Dalmia, etc.* v. *Shri Justice S. R. Tendolkar, etc.* (1), have not been satisfied. While examining these matters it has also to be borne in mind what has been laid down by their Lordships, namely, that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles and that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds.

No other point was urged before me.

In the result, these petitions fail and are dismissed, but taking into consideration the entire circumstances, I leave the parties to bear their own costs.

R.S.

FULL BENCH.

Before G. D. Khosla, C.J., Tek Chand and D. K. Mahajan, JJ.

RISALDAR MAJOR AMAR SINGH,—*Appellant.*

versus

R. L. AGGARWAL AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 78 of 1957.

1959

Dec., 10th

Punjab Alienation of Land Act (XIII of 1900)—Section 14—Sale of agricultural land by an agriculturist to a

(1) A.I.R. 1958 S.C. 538