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may fall short of its purpose. That is a misfortune for the tax-payers who do not try to avoid their share of the burden, and it is disappointing to the Inland Revenue. But the Court will not stretch the terms of taxing Acts in order to improve on the efforts of Parliament and to stop gaps which are left open by the statutes. Tax avoidance is an evil, but it would be the beginning of much greater evils if the Courts were to overstretch the language of the statute in order to subject to taxation people of whom they disapproved."

If the Legislature intended that a person who fails to comply with the provisions of section 18-A (3) should be punished under the provisions of section 28, the language which it has chosen to employ appears to me to be most inadequate.

For these reasons, I am of the opinion that the question propounded by the Tribunal must be answered in the negative.

Falshaw, J.

FALSHAW, J. I agree.

APPELLATE CIVIL

Before Bhandari, C.J., and Falshaw, J.

MAJOR U. R. BHAT,— *Plaintiff-Appellant*

versus

THE UNION OF INDIA,—*Defendant-Respondent.*

Regular Second Appeal No. 60-D of 1952

1954

Nov., 12th

Government of India Act, 1935—Section 266—Provisions of, whether mandatory or directory—Failure on part of Government to consult Public Service Commission before ordering the discharge of a Government servant—Effect of.

Civil Service (Classification, Control and Appeal) Rules—Rule 55—Provisions of rule 55 not followed—Whether gives a Government servant any legal cause of action.

Held as follows:—

(1) No rule has so far been devised which would enable the Court to decide in every case whether a statutory provision is mandatory or directory. In each case the Court should look to the subject-matter, consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act, and upon a review of the case in that aspect decide whether the enactment is imperative or only directory.

(2) Failure on the part of Government to consult the Public Service Commission before ordering the discharge of a Government servant does not render the order of discharge void and of no effect. Although normally the Public Service Commission should be consulted and its advice followed by Government, it is not necessary for Government to be bound by that advice. No penalty was prescribed by the Constitution Act for failure on the part of Government to disregard the advice given by the Commission. As the functions of the Commission are purely advisory and as Government is not bound to follow the advice tendered by it, it is obvious that an omission on the part of Government to ascertain the view of the Commision in regard to an order of removal or dismissal does not render the order itself null and void. The order having been made by the authority competent to make it after a reasonable opportunity was afforded to the plaintiff or having his say, and after all the mandatory provisions of law having been complied with, the order itself cannot be regarded as invalid in the eye of law.

(3) An omission on the part of an enquiring officer to comply with the provisions of rule 55 cannot give a Government servant any legal cause of action when he had been afforded a reasonable opportunity of showing cause against the action which was proposed to be taken in regard to him.

Howard v. *Bodington* (1), *R. Venkata Rao* v. *Secretary of State* (2), *Secretary of State* v. *I. M. Lall* (3), *and the High Commissioner for India and another* v. *I. M. Lall* (4), followed.

(1) 2 P.D. 203
(2) A.I.R. 1937 P.C. 31
(3) A.I.R. 1945 F.C. 47
(4) A.I.R. 1948 P.C. 121

Second Appeal from the decree of the Court of Shri S. S. Dulat, District Judge, Delhi, dated the 30th day of July, 1952, reversing that of Shri Chetan Dass Jain, Sub-Judge, 1st Class, Delhi, dated the 28th August, 1950 and dismissing the plaintiff's suit and leaving the parties to bear their own costs throughout.

H. J. UMRIGAR and S. N. ANDLEY, for Appellant.
BISHAMBAR DYAL, for Respondent.

JUDGMENT

Bhandari, C.J.

BHANDARI, C. J. This appeal raises the question whether a failure on the part of Government to consult the Public Service Commission before ordering the discharge of a Government servant renders the order of discharge void and of no effect.

The plaintiff in this case is one Major U. R. Bhat, who was appointed Senior Inspector (Fruits Products) in the Central Agricultural Marketing Department on the 9th April, 1946, on a salary of Rs. 810 per mensem. He was to remain on probation for a period of six months. His services were liable to be terminated without notice during the period of probation and afterwards by three months' notice on either side except in the case of professional incompetency in which case no notice was to be given.

On the 17th March, 1947, a charge-sheet was handed over to the plaintiff and he was asked to show cause why he should not be removed from the service of the Crown and on the 3rd May, 1947, he was placed under suspension. An inquiry was later held under the provisions of rule 55 of the Civil Services (Classification, Control and Appeal) Rules and on the 3rd December, 1947, the Governor-General of India discharged him from the service of the Crown with effect from the date on which he was placed under suspension.

On the 2nd December, 1948, the plaintiff brought the suit out of which this appeal has arisen for a declaration that the order of discharge, dated the 3rd December 1947, was arbitrary and capricious and that the plaintiff was in the service of the Crown on the date on which the suit was instituted. The trial Court came to the conclusion that although the plaintiff was not afforded an adequate opportunity of defending himself as required by rule 55 of the Civil Services (Classification, Control and Appeal) Rules, that fact alone could not provide him with a cause of action in the civil courts when it was established by convincing evidence that he was afforded a reasonable opportunity of showing cause against the action that was proposed to be taken in regard to him. It held, however, that as section 266 of the Government of India Act, 1935, imposes a statutory obligation on Government to consult the Public Service Commission before ordering the removal of a Government servant and as Government failed to consult the said Commission before ordering the removal of the plaintiff, the order in question was void and of no effect. The Court accordingly passed a decree in favour of the plaintiff. The learned District Judge to whom an appeal was preferred endorsed the view of the trial Court that the provisions of section 240 of the Government of India Act had been substantially complied with but he was unable to uphold the finding that failure on the part of Government to consult the Public Service Commission had rendered the order of discharge invalid. The plaintiff is dissatisfied with the order and has come to this Court in second appeal.

Two points have been agitated before us in appeal. It is contended in the first place, that although definite charges were framed against the

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plaintiff and although he was notified of the charges, the procedure prescribed by rule 55 of the Civil Services (Classification, Control and Appeal) Rules was not followed in this case as no witnesses were examined by the Enquiring Officer and a report was submitted to Government on the basis of the material which was already on the record of the case. This objection appears to me to be devoid of force, for a perusal of the file makes it quite clear that the failure on the part of the Enquiring Officer to examine the said witnesses was due not to the fact that the witnesses were not present or that it was not considered necessary to examine them in the presence of the plaintiff but because the plaintiff refused to participate in the proceedings and for all practical purposes boycotted the inquiry. It seems to me, therefore, that the Enquiring Officer was not wholly unjustified in declining to record the evidence of witnesses or submitting his report to Government on the basis of the material which was already on the file. Be that as it may, the fact remains that an omission on the part of an Enquiring Officer to comply with the provisions of rule 55 cannot give a Government servant any legal cause of action in a Court of Law, *R. Venkata Rao* v. *Secretary of State* (1), *Secretary of State* v. *I. M. Lall* (2), and *High Commissioner for India and another* v. *I. M. Lall* (3). It has not been denied that the plaintiff was afforded a reasonable opportunity of showing cause against the action which was proposed to be taken in regard to him.

The second submission turns upon the construction of section 266 of the Government of India Act, 1935. This section provides that subject to

(1) A.I.R. 1937 P.C. 31
(2) A.I.R. 1945 F.C. 47
(3) A.I.R. 1948 P.C. 121

such regulations as may be made by Government, the Public Service Commission shall be consulted on all disciplinary matters affecting a Government servant. One of the regulations made by Government provides that it shall not be necessary to consult the Commission before an order is passed in any disciplinary case other than an original order by the Governor-General imposing the penalty of removal or dimissal.

It is contended on behalf of the plaintiff that as the Central Government was under an obligation to consult the Commission before ordering the discharge of the plaintiff and as the Commission was not consulted in the present case, the order of discharge must be deemed to be null and void. While there can be no manner of doubt that this section imposes an obligation on Government to consult the Commission in regard to disciplinary matters, the question arises whether this provision can be regarded as mandatory or directory. If it is mandatory, it must be followed in order that the proceeding to which it relates may be valid. If, on the other hand, it is merely directory, it need not be complied with in order that the proceeding to which it pertains may be valid. No rule has so far been devised which would enable a Court to decide in every case whether a statutory provision is mandatory or directory. Each case must be decided on its own facts. In *Howard* v. *Bodington* (1), Lord Penzanc observed as follows :—

> "I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter, consider the importance, of the provision and the relation of that provision to the general object intended to be secured by the Act, and upon

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a review of the case in that aspect decide whether the enactment is what is called imperative or only directory * * *. I have been very carefully through all the principal cases, but upon reading them all the conclusion at which I am constrained to arrive, is this, that you cannot glean a great deal that is very decisive from a perusal of these cases. They are on all sorts of subjects. It is very difficult to group them together, and the tendency of my mind, after reading them, is to come to the conclusion which was expressed by Lord Campbell :

> "No universal rule can be laid down, * * * I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory."

Now, what exactly was the intention of Parliament when it proceeded to enact section 266 of the Government of India Act, 1935? The intention obviously was that although normally the Public Service Commission should be consulted and its advice should be followed by Government, it is not necessary for Government to be bound by that advice. No penalty was prescribed by the Constitution Act for failure on the part of Government to disregard the advice given by the Commission. Having regard to the fact that the

functions of the Commission are purely advisory and to the fact that Government is not bound to follow the advice tendered by it, it seems to me that an omission on the part of Government to ascertain the views of the Commission in regard to an order of removal or dismissal does not render the order itself null or void. The order in the present case has been made by the authority competent to make it and it was made after a reasonable opportunity was afforded to the plaintiff of having his say. As all the mandatory provisions of law have been complied with, the order itself cannot be regarded as invalid in the eye of law.

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For these reasons, I would uphold the order of the learned District Judge and dismiss the appeal. Having regard to the peculiar circumstances of the case, I would leave the parties to bear their own costs.

FALSHAW, J. I agree.

Falshaw, J.

CIVIL WRIT

Before Kapur and Dulat, JJ.

KAPUR TEXTILE FINISHING MILLS,—*Petitioners*

versus

THE REGIONAL PROVIDENT FUND COMMISSIONER, PUNJAB,—*Respondent.*

Civil Writ No. 54 of 1954

1954

Nov., 15th

Employees' Provident Funds Act (XIX of 1952) Sections 2(1), 4 and Schedule I—Establishments doing merely processing of textile goods by dyeing, printing, bleaching and finishing—Whether an industry engaged in the manufacture or production of textiles—Later amendment by way of abundant caution—Effect of—Interpretation of Statutes —Rules as to, stated.

Held, that the word "textile" will include to mean anything from yarn to woven material which may be coarse or which may be fine, which may be made of cotton or wool or jute or silk, which may be bleached or unbleached, which may be printed or just plain and for the purpose of its being made available for human wants it may have to undergo several processes, and it is for that reason that the legislature thought it fit to use the expression "Manufacture or production". "Manufacture" would mean making an article which is capable of being used and designed