APPELLATE CIVIL.

Before Kapur, J.

PUNJAB STATE,—*Defendant-Appellant*

versus

BHAGAT SINGH,—*Plaintiff-Respondent.*

Regular Second Appeal No. 891 of 1951

1954

Nov., 29th

Government of India Act (1935)—Sections 240(3) and 234—Members of subordinate police service—Whether entitled to the protection of section 240, Government of India Act (1935)—Practice...Judgment of the Federal Court whether takes precedence over the judgment of the Privy Council before the Privy Council Appeals were transferred to the Federal Court.

Police Act (V of 1861) sections 7 and 35—Difference between—Departmental enquiry—Breach of rules of procedure—Punishment inflicted whether gives right of action to the person aggrieved—Whether a Government Servant has a right to be represented by counsel in Departmental enquiry.

Held, that—

(1) the members of the subordinate police service were not entitled to protection of section 240(3) of the Government of India Act of 1935, but their conditions of service were governed by Section 243 of the Act.

(2) the judgments of the Federal Court previous to the time when the Privy Council appeals were transferred to the Federal Court do not take precedence over the judgments of the Privy Council.

(3) Section 35 of the Police Act deals with judicial enquiry and has no application to departmental enquiry under section 7.

(4) a contravention of the rules of procedure does not give to a person aggrieved by departmental punishment a right of action.

(5) in a departmental enquiry a Government servant has not a right to be represented by counsel.

N.W.W. Province v. *Suraj Narain* (1), followed; *Gulzar Ahmed Jafri* v. *Government of United Provinces* (2), *Mewa Ram Ram Charn* v. *United Provinces* (3), *Jagan Nath Parsad* v. *State of U.P. and others* (4), *State of Bombay* v. *Gajanan Mahdev Badley* (5), *Tarapada Banerjee* v. *State of West Bengal* (6), *Shiva Nandan* v. *State of West Bengal* (7), relied upon. *Vankata Rao's case* (8), followed. *Lalta Parsad*

(1) A.I.R. 1949 P.C. 112
(2) I.L.R. 1950 All. 1122
(3) A.I.R. 1954 All. 487
(4) A.I.R. 1954 All, 629
(5) 56 B.L.R. 172
(6) A.I.R. 1951 Cal. 179
(7) A.I.R. 1954 Cal. 60
(8) I.L.R. 1937 Mad. 532 (P.C.)

v. *Inspector-General of Police* (1), *Bhugiram* v. *Superintendent of Police* (2), dissented from and *State of Bihar* v. *Abdul Majid* (3), distinguished.

Second appeal from the decree of the Court of J. S. Bedi, District Judge, Ambala, dated the 16th July, 1951, affirming that of Shri J. N. Kapur, Senior Subordinate Judge, Simla, dated the 31st December, 1949, granting the plaintiff a declaratory decree to the effect that the dismissal of the plaintiff,—vide *order of the Superintendent of Police, Simla, dated the 29th January, 1944, was void, illegal and inoperative and was wrongful and that the plaintiff continues to be a member of the Punjab Police and has got a right to continue to hold office from which he has been removed and is entitled to all rights secured to him by covenants and rules and regulations issued from time to time by the appropriate authorities with costs throughout.*

S. M. SIKRI, Advocate-General and HAR PARSHAD, Assistant Advocate-General, for Appellant.

A. R. KAPUR and MADAN LAL KAPUR, for Respondent.

JUDGMENT

KAPUR, J. This is an appeal brought by the Punjab State against an appellate decree of District Judge, J. S. Bedi, confirming the decree of the trial court decreeing the plaintiff's suit for a declaration that his dismissal by the Superintendent of Police of Simla, dated the 25th January, 1944, was void, illegal and inoperative. Kapur, J.

The plaintiff, Bhagat Singh, joined the Police on the 15th August 1931, as a Foot Constable and became a Head Constable and was officiating as an Assistant Sub-Inspector. During the War he was working in the Censor Department and it is alleged that he extracted and kept certain letters sent by one Rai Bahadur Mitra employed in the Government of India to a young girl and tried to blackmail the girl. A trap was laid and he was caught and an enquiry was then set on foot by the Superintendent of Police of Simla

(1) A.I.R. 1954 All. 438
(2) A.I.R. 1954 All. 18
(3) 1954 S.C.A. 226

Punjab State
v.
Bhagat Singh

Kapur, J.

who dismissed the petitioner on the 25th January, 1944. The offence is stated to have been committed on the 5th January. The enquiry by the Superintendent of Police was on the 21st January and the dismissal was on the 25th January, 1944. An appeal was taken to the Deputy Inspector-General of Police but it was dismissed on the 19th May, 1944 and a revision against this order was dismissed by the Inspector-General of Police on the 5th June 1944.

The petitioner has brought the present suit for a declaration that the order of dismissal is void, illegal and inoperative alleging that the charge of misconduct brought against him was due to enmity, the departmental enquiry was arbitrary and was not conducted in accordance with the law and rules prescribed under the Police Act and that no defence was recorded and therefore his dismissal was inoperative. The defence was that the matter could not be agitated in Courts as the plaintiff was a servant of the Crown and he could be dismissed at the pleasure of the Crown and he was dismissed by a competent authority. The allegation with regard to enmity and arbitrary nature of the enquiry were denied. It was also pleaded that the petitioner was guilty of gross misconduct in that he abused his position as a police censor, detained letters illegally and using photos and copies of the letters tried to blackmail certain persons. The allegations with regard to not recording of the defence are also denied. The Subordinate Judge, Mr. Jagdish Narain Kapur, framed the following issues—

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

2. Whether the civil Courts have jurisdiction to entertain the suit or to go into the question of the validity of the departmental enquiry?

3. Whether the suit for a declaration lies and is competent and why?

The Subordinate Judge decided the issues in favour of the plaintiff and decreed the suit. The learned District Judge affirmed the decree of the trial Court and held that as there was a contravention of section 240 (3) of the Government of India Act of 1935, the dismissal of the plaintiff was illegal. He also found that the refusal of the Inquiring Officer for a legal practitioner to appear on behalf of the plaintiff was not a proper exercise of discretion and under Chapter XVI of the Punjab Police Rules the Inquiring Officer was bound to require the plaintiff to state his answer to the charge framed and to allow him a week's time to make an oral statement explaining the alleged incriminating circumstances and that had not been done. He also held that the plaintiff could be dismissed by the Superintendent of Police because although he was an acting Assistant Sub-Inspector he had on the 21st January, 1944 been reverted to his substantive post of a Head Constable who could under the Rules be dismissed by the Superintendent of Police. The State has come up in appeal to this Court.

Under section 240 of the Government of India Act every person who was a member of the civil service of the Crown in India or held any civil post, held office during the pleasure of the Crown. Subsection (3) of this section gave certain protection

Punjab State
v.
Bhagat Singh

Kapur, J.

which in *I. M. Lall's case* (1) was held to be of a mandatory character, a contravention of which was actionable in a Court of law, but in regard to subordinate Police there was a special provision in the Act in section 243 which provided—

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

It has been held in *N. W. F. Province* v. *Suraj Narain* (2), which was an appeal from the judgment of the Federal Court in I.L.R. 1942 Lah. 692 that the right of dismissal was a condition of service within the meaning of section 243 and thus the judgment of the Federal Court was reversed. On the construction of section 243 of the Government of India Act the Federal Court had held that 'conditions of service' did not include provisions as to dismissal and this view the Privy Council held to be erroneous. I am therefore of the opinion that neither the provisions of section 240(3) of the Government of India Act nor the rule laid down in *I. M. Lall's case,* (1), applied to members of the subordinate police service. This view finds support from a judgment of the Allahabad High Court in *Gulzar Ahmad Jafri* v. *Government of United Provinces* (3), where it was held that the protection under section 240(3) of the Government of India Act, 1935, is not available to police officers of a subordi-

(1) A.I.R. 1948 P.C. 121
(2) A.I.R. 1949 P.C. 112
(3)I.L.R. 1950 All. 1122

nate rank who are governed by section 243 of the said Act. At page 1231 Malik C. J. said—

"This result would follow only if the words 'no such person as aforesaid' in section 240(2) are interpreted to mean a person who holds office during His Majesty's pleasure. The others who come under section 243 must be deemed to be governed by their contract or by their rules of service." The same was held in *Mewa Ram Ram Charan* v. *United Provinces* (1), and in *Jagannath Prasad* v.*State of U.P. and others* (2), and in the former case it was held that the safeguard under section 240 (3) of the Government of India Act in regard to termination of service has not been made available to subordinate members of the Police Force and their conditions of service are to be governed by the Police Act and by the regulations framed under the Act.

It was contended by Mr. Amolak Ram Kapur that the judgment of the Federal Court in *Suraj Narain's case* (5), must be taken to be the law declared binding on this Court and not the judgment of the Privy Council, and he relies on the combined effect of Articles 141 and 374 (2) of the Constitution of India and section 212 of the Government of India Act of 1935. According to section 212 the law declared by the Federal Court and the Privy Council is binding on all Courts in India. I take it that before the coming into force of the Constitution of India any judgment of the Federal Court reversed by the Privy Council would be the law declared binding on Courts in India. By Article 141 of the Constitution the law declared by the Supreme Court is binding on all Courts within the territory of India and therefore if any judgment of the Privy Council is not

(1) A.I.R. 1954 All. 487
(2) A.I.R. 1954 All, 629
(3) I.L.R. 1942 Lah. 692

Punjab State
v.
Bhagat Singh

Kapur, J.

in accord with the view taken by the Supreme Court the latter must prevail. Article 374 (2) of the Constitution in my opinion was only for the period of *interregnum* when the proceedings which were pending before the Privy Council were removed to the Federal Court and on the Federal Court was conferred the jurisdiction which was previously exercised by the Privy Council. This Article provides that all suits, appeals and proceedings which were pending in the Federal Court were on the establishment of the Supreme Court to stand removed to the Supreme Court and the judgments and orders of the Federal Court made before the commencement of the Constitution were to have the same force as if they were the judgments of the Supreme Court. It does not give an overriding authority to the judgments of the Privy Council at a time when the Privy Council was the senior most Court of appeal and its judgments were binding on all Courts throughout the territory of India. This opinion has the support of a judgment of the Bombay High Court in the *State of Bombay* v. *Gajanand Mahadev Badley* (1), where it was held that the final authority, so far as the Government of India Act of 1935 was concerned in constitutional matters, was not the Federal Court but if an apeal was entertained by the Privy Council it was the Privy Council that was the ultimate authority and it is open to the Supreme Court after the enactment of the Constitution of India to lay down the law contrary to the views expressed by the Privy Council but till then the decision of the Privy Council must continue to have binding authority upon all the Courts in India. The learned Judges relied on *Om Prakash* v. *United Provinces* (2), and *Province of Bombay* v. *Madhukar*

(1) 56 Bom. L.R. 172
(2) A.I.R. 1951 All. 205

Ganpat (1), and I am in respectful agreement with this opinion which, as I have said, is clear from a combined reading of sections 205, 208 and 212 of the Government of India Act of 1935 and Articles 141 and 374 (2) of the Constitution of India.

Mr. Amolak Ram Kapur then contended that even if section 243 of the Government of India Act of 1935 is applicable to the case, the enquiry by a District Superintendent of Police was not in accordance with the Police Act. Under section 5 of that Act the Inspector-General of Police has the powers of a Magistrate throughout the General police district. Under section 28 of that Act provision is made for trial and conviction before a Magistrate of persons who refuse to deliver up certain kits etc. on ceasing to be a police officer, and section 29 deals with trials and punishments of police officers who are guilty of violation of duty and other offences mentioned in that section. Section 35 deals with charges against a police officer above the rank of a constable under the Act. This section runs as under—

> "35. *Jurisdiction.* — Any charge against a police-officer above the rank of a constable **under this Act shall be enquired into and determined only by an officer exercising the powers of a Magistrate."**

In my opinion this section does not deal with departmental enquiries but must be read *ejusdem generis* with the offences mentioned in sections 28 and 29 of the Police Act. The words 'officer exercising the powers of a Magistrate' have been defined to mean a 'Magistrate of the first class' in section 3 (2) of the Criminal Procedure Code

(1) 53 Bom. L.R. 754

Punjab State v. Bhagat Singh

Kapur, J.

which is an Act later than the Police Act, and therefore section 35 was intended to apply to a judicial enquiry into charges and not to enquiry in the nature of departmental procedings, *see* *Tarapada Banerjee* v. *State of West Bengal* (1), paragraph 11. Similarly in *Shiva Nandan* v. *State of West Bengal* (2), it was held that section 35 of the Police Act contemplates judicial enquiry and must be taken to be a proviso to sections 28 and 29 of the police Act and that sections 7 and 35 of the Police Act are different in their scope and application. I am unable to agree therefore that section 35 of the Police Act has in any way been contravened because the enquiry was by a District Superintendent of police.

In the Punjab Police Rules of 1934, Volume II, which are made under section 7 of the Police Act, in rule 16.1 are given authorised punishments, and the persons who can give those punishments, and the punishment of reduction is allowed to be imposed by a District Superintendent of Police. The plaintiff was acting as an Assistant Sub-Inspector of Police and he was reduced to the rank of a Head Constable by the District Superintendent of Police and no objection can in my opinion be taken to this, particularly when the plaintiff was only acting as an Assistant Sub-Inspector.

It was then submitted by the plaintiff's counsel that the provisions of Chapter XVI of the Rules are mandatory and that any contravention of the procedure as laid down in rule 24 of this Chapter gives an aggrieved person a right of adjudication by Courts as to the legality of any punishment awarded, and he relied on the observations of their Lordships of the Supreme Court

(1) A.I.R. 1951 Cal. 179 at p. 181
(2) A.I.R. 1954 Cal. 60

in the *State of Bihar* v. *Abdul Majid* (1), where Mahajan, C. J., said—

Punjab State *v.* Bhagat Singh

Kapur, J.

> "It follows therefore that whenever there is a breach of restrictions imposed by the statute by the Government or the Crown the matter is justiciable and the party aggrieved is entitled to suitable relief at the hands of the Court."

Counsel also referred to *Jagannath Prasad* v. *State of U. P.* (2), but I am unable to derive any assistance from this judgment because the facts in that case and the one before me are totally different. Nor do I think that *Abdul Majid's case* (1), has any application to the facts of the present case. The learned Chief Justice was there dealing not with the breach of any rules but with the breach of the provisions of section 240 of the Government of India Act which was a constitutional guarantee to the civil servants in regard to certain matters. In the present case what is submitted is that there is a breach of the rules. Assuming though not so deciding that there was a breach of rules then in this case the breach consisted of not following to the letter of the law the procedure prescribed in rule 24 of Chapter XVII of the Rules.

Now, the breach of rules is of two kinds (1) which may be in regard to procedure and (2) which is more fundamental and that is dismissal by a person not authorised by law to order dismissal. The case of the latter kind was dealt with by the privy Council in *Rangachari's case* (3), and in *Suraj Narain's case* (4). In both these cases the Privy Council was dealing with the dismissal of a Civil

(1) 1954 S.C.A. 226
(2) A.I.R 1954 All. 629
(3) I.L.R. 1937 Mad. 617 (P.C.)
(4) A.I.R 1949 P.C. 112

Punjab State
v.
Bhagat Singh

Kapur, J.

servant by a person who was not authorised to dismiss. In the former case at page 529 Lord Roche said—

> "Their Lordships are clearly of opinion that the dismissal purporting to be thus ordered in February was by reason of its origin bad and inoperative.....
>
> .....
>
> It is manifest that the stipulation or proviso as to dismissal is itself of statutory force and stands on a footing quite other than any matters of rule which are of infinite variety and can be changed from time to time. It is plainly necessary that this statutory safeguard should be observed with the utmost care and that a deprivation of pension based upon a dismissal purporting to be made by an official who is prohibited by a statute from making it rests upon an illegal and improper foundation."

In *Suraj Narain's case* (1), after their Lordships came to know that the dismissal was by a person who was not authorised the dismissal was held to be illegal and based on improper foundation. The basis of both these decisions was that the dismissal was by a person who under the statute was not allowed to dismiss.

But there is another class of rules which I have called procedural and which was dealt with by the Privy Council in *Venkata Rao's case* (2). In that case the dismissed civil servant complained that the dismissal was contrary to the statute

(1) A.I.R. 1949 P.C. 112 (2) I.L.R. 1937 Mad. 522 (P.C)

inasmuch as it was not preceded by any such enquiry as is prescribed by the Civil Service Classification Rules which were made under section 97-B of the Government of India Act of 1919. Dealing with section 96-B of the Government of India Act it was held that the terms of the section contain a statutory and solemn assurance that the service though at pleasure, will not be subject to capricious or arbitrary action and will be regulated by rules but they do not import a special kind of employment with an added contractual term that the rules are to be observed. The dismissal of a civil servant therefore in utter disregard of a procedure prescribed by the rules framed under the section will not give a right of action for wrongful dismissal. I would like to emphasise the following observations of Lord Roche at page 542—

> "* * * * control by the Courts over Government in the most detailed work of managing its services would cause not merely inconvenience but confusion."

The words in section 7 of the Police Act also begin, as did the words of section 96-B of the Government of India Act, with the words 'subject to such rules as.....'.

Mr. Amolak Ram Kapur relied on a judgment of the Allahabad High Court in *Lalta Prasad* v. *Inspector General of Police* (1), and of the Assam High Court in *Bhugiram* v. *Superintendent of Police*. (2). In the former case it was held that if a reasonable opportunity is not given to the person proceeded against for defending himself by not being allowed to test the value of the prosecution evidence by cross-examination, then the Courts will interfere under Article 226. Sapru,

(1) A.I.R. 1954 All. 488
(2) A.I.R. 1954 Assam 18

Punjab State
v.
Bhagat Singh

Kapur, J.

J. was of the opinion that important as the discipline of the police force is and desirable as it is for the High Court not to interfere lightly with orders of disciplinary action, there is no escaping the position that the procedure adopted in disallowing all leading questions in cross-examination was such as could prejudice a fair hearing of the case against the petitioner. If the decision of this case was on some rules peculiar to the U.P. Police, then this case is no authority for the case before me, but if it is of a general application I would respectfully say that I am unable to agree with it. The true rule in my opinion is laid down in an English case *Ex parte Fry* (1), where a writ of *certionari* was moved on the ground that the Chief Fire Officer did not act in a judicial manner. The petition was dismissed on the ground that the Chief of the Fire Brigade when exercising disciplinary authority over a member of the force is acting either judicially or *quasi* judicially and that the remedy is discretionary in the Courts and for the good of the service and of those who are employed in the service the Courts should not interfere. Reliance was there placed on a judgment of the Court in *R. v. Meteropolitan Police Commissioner, Ex. p. Parker* (2), where Lord Goddard, C.J., said as follows—

> "* * * * Where a person, whether he is a military officer, a police officer, or any other person whose duty it is to act in matters of discipline, is exercising disciplinary powers it is most undesirable in my opinion, that he should be fettered by threats of orders of *certiorari* and so forth, because that interferes with the free and proper exercise of the disciplinary powers which he has."

(1) (1954) 2 A.E.R. 118
(2) (1953) 2 A.E.R. 717

In any case merely because some questions have not been allowed to be put would not vitiate the proceedings which were before the Superintendent of Police and moreover that was a case which was before the coming into force of the Constitution. In the other case which Mr. Amolak Ram Kapur has relied upon, the Division Bench of the Assam Court held that if there is a violation of the rules governing the conduct of proceedings against a Sub-Inspector of Police, the order of dismissal is illegal, but in neither of these cases was the judgment of the Privy Council in *Rangachari's case* (1), or in *Venkata Rao's case* (2), brought to the notice of the learned Judge. I would, therefore, prefer to follow the judgment of the Privy Council rather than these two judgments. I am therefore of the opinion that a contravention of rules in regard to procedure which were contained in rule 24 of Chapter XVI of the Punjab Police Rules does not give to an aggrieved person a right of action and a similar view was taken by this Court in *Des Raj Kirpa Ram* v. *Punjab State*, (3). The Madras High Court was of the same opinion in *Krishnamoorthy* v. *State of Madras*, (4).

I would also like to say that there was really no serious contravention of the rules. The witnesses who have appeared were cross-examined both by the plaintiff as well as by Inquiring Officer and it cannot be said that the examination was either perfunctory or cryptic or short. A lengthy cross-examination was directed against these witnesses. The plaintiff was then charge-sheeted and he was called upon to put in his defence within 48 hours. Instead of doing that he put in an application stating that he was not submitting his list and

(1) I.L.R. 1937 Mad. 617 (P.C.)
(2) A.I.R. 1937 Mad. 5[illegible] (P.C.)
(3) A.I.R. 1954 Punjab 134
(4) A.I.R. 1951 Mad. 882

Punjab State
v.
Bhagat Singh

Kapur, J.

asked for postponement so that the District Superintendent of Police who was making the enquiry should not be able to do so.

On the 24th of January 1944 the plaintiff applied to the Inquiring Officer for permission to engage counsel. In my opinion it is not the right of a person against whom departmental enquiry is being conducted to have a legal adviser. It was so held in *Veeraswami* v. *Provincial Government of Madras* (1), where it was said that there is no common law right in a Government servant to be represented by counsel in an enquiry against him. Reliance was there placed on *Qudratullah* v. *N. W. F. Province* (2).

I am of the opinion therefore that—

(1) the members of the subordinate police service were not entitled to protection of section 240 (3) of the Government of India Act of 1935 but their conditions of service were governed by section 243 of the Act ;

(2) the judgments of the Federal Court previous to the time when the Privy Council appeals were transferred to the Federal Court do not take precedence over the judgments of the Privy Council ;

(3) section 35 of the Police Act deals with judicial enquiry and has no application to departmental enquiry under section 7;

(4) a contravention of the rules of procedure does not give to a person aggrieved by departmental punishment a right of action ;

(1) A.I.R. 1948 Mad. 379
(2) A.I.R 1944 F.C. 72

(5) in a departmental enquiry a Government servant has not a right to be represented by counsel ; and

(6) in this particular case there was no very serious contravention of the rules.

I am of the view that both the Courts below have taken an erroneous view of the law and as a result have come to an erroneous conclusion. I would therefore allow this appeal, set aside the decree of the Courts below and dismiss the plaintiff's suit with costs throughout.

Leave has been asked for to appeal under Letters Patent, but I refuse to grant leave.

CIVIL WRIT

Before Kapur, J.

GODHA SINGH—*Petitioner.*

versus

THE DISTRICT MAGISTRATE, FEROZEPORE AND THE PUNJAB STATE,—*Respondents.*

Civil Writ No. 321 of 1954

1954

Dec., 7th

Indian Arms Act (XI of 1878) Section 18—Licence cancelled by District Magistrate upon a detailed report of Senior Police Officers— District Magistrate only writing "cancelled" and giving no reasons—Order of cancellation whether valid—Constitution of India—Article 226—Such Orders whether call for interference under Article 226 of the Constitution.

Held, that on a detailed report made to the District Magistrate he wrote the word "cancelled". In such circumstances the word "cancelled" should be read as if the District Magistrate after agreeing with the reasons given in the report and accepting them to be sufficient cancelled the licence and thus there was no violation of the provisions of section 18 of the Arms Act.

Held further, that the possession of arms is a matter which deals with the security of the State and the proper persons to judge that a particular person is fit to have a licence for a fire-arm like a revolver or not are the persons in whom discretion is vested by the State and it is not for Courts to substitute their discretion for that of the Executive Officers in whom the Legislature has reposed confidence.