PRIVY COUNCIL

North West Frontier Province

Vs.

Suraj Narain Anand

P.C.A.No.38 of 1945
(Lords Thankerton, Du Parcq, Qakasey, Morton of Henryton and Mr. M. R. Jayakar JJ.)

18.3.1948, 4.11.1948.

JUDGMENT

LORD THANKERTON J.

1. (part I). (Delivered on 18.3.1948)-This is an appeal by special leave from a judgment and decree of the Federal Court of India, D/- 4.12.1941, reversing a decree of the Court of the Judicial Commissioner, North-West Frontier Province, Peshawar, date 19.9.1940, which had affirmed a decree of the Senior Subordinate Judge, Peshawar, dated 8th March 1940. The Federal Court made a declaration that the respondent's dismissal was void and inoperative, and submitted the case to the Court of the Judicial Commissioner for consideration of the respondent's claim for arrears of pay.

2. On 1st March 1928, the respondent was appointed as a Sub-Inspector of Police by the Inspector General of Police, North-West Frontier Province. On 25th April 1938, the respondent was dismissed by the Deputy Inspector General of Police, on a charge of copying during a departmental examination. He was therefore dismissed by an authority subordinate in rank to the officer who had appointed him.

3. After unsuccessful appeals to the Inspector-General of Police and the Provincial Government, the respondent instituted the present suit on 17th June 1939, in which he claimed a declaration that the order of dismissal was illegal, null and void, invalid and inoperative and that he still retained his office as Sub-Inspector of Police. He further claimed arrears of pay from the date of the order of dismissal up to that date. There was an alternative claim for damages, which no longer survived before this Board. The main question concerns the validity of the order of dismissal, which is challenged

on the ground that the dismissing authority was subordinate in rank to the authority by whom the respondent had been appointed. It is sought to be justified on the provisions of the North-West Frontier Police Rules, which are made under the authority of the Indian Police Act, 1861 (Act 5 of 1861), and it will be convenient to trace the history of these rules, so far as relevant to the point at issue, and the general statutory provisions which affect them.

4. Section 7, Police Act of 1861, provides.

> "7. The appointment of all police officers other than those mentioned in Section 4 of this Act shall, under such rules as the Local Government shall from time to time sanction, rest with the Inspector-General, Deputy Inspectors-General, Assistant Inspectors-General and District Superintendents of Police, who may, under such rules as aforesaid, at any time dismiss, suspend or reduce any police officer whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same."

Sub-Inspectors are not mentioned in section 4, and there is no restriction excluding dismissal by an officer subordinate in rank to the appointing officer.

5. At the date of the respondent's appointment in 1928, the North-West Frontier Police Rules, 1917, as amended from time to time, were in force; the relevant rule was Rule 17-1 of Ch. XVII, which had been made by a correction slip on 25th September 1919, which clearly provided that a Sub-Inspector could only be dismissed by the Inspector-General of Police, or by an officer of higher rank.

6. On 24th January 1931, by a correction slip, Rule 17-1 was amended so as to substitute "Deputy Inspector-General of Police" for "Inspector-General of Police" as entitled to dismiss a Sub-Inspector. Having in view section 96B, Government of India Act, 1919, and the decision of this Board in *Rangachari v. Secretary of State for India,* this amendment of 1934 was clearly invalid and inoperative. Sub-section (1) of section 96B provided that no person in the civil service of the Crown in India" may be dismissed by any authority subordinate to that by which he was appointed", and it was held in Rangachari's case, (64 IA 40 : AIR 1937 PC 27) that this was a mandatory statutory restriction, which could not be affected by any rules. Lord Roche, in delivering the judgment of the Board, said (at p. 53).

> "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."

The rules then existing are dealt with in sub section (4) of section 96B, which provided;

> "(4) For the removal of doubts, it is hereby declared that all rules or other provisions in operation at the time of the passing of the Government of India Act, 1919, whether made by the Secretary of State in Council or by any other authority, relating to the civil service of the Grown in India, were duly made in accordance with the powers in that behalf, and are confirmed, but any such rules or provisions may be revoked, varied, or added to by rules or laws made under this section."

It follows that the amendment of 1934 was inconsistent with the provisions of sub section (1) of section 96B, and was therefore invalid and inoperative.

7. Before the dismissal of the respondent on 25th April 1938, the Government of India Act, 1935, had come into operation on 1st April 1937. Section 240 of that Act, so far as relevant for the present purpose, provided as follows:

> "240. (1) Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure.
> (2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.
> (3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken against him."

8. The proper construction of this section has been fully dealt with in the judgment of this Board just delivered in The High Commissioner for India and the *High Commissioner for Pakistan v. Lall* [2] to which reference may be made. In that case the question arose as to the effect of non compliance with the provisions of sub section (3) of Section 240 and it was held that sub section (3) was a statutory term of service of the Crown, which qualified the provisions of sub-section (1) of Section 240 and was mandatory and not permissive. On the principles of this decision, and the decision in Ranagachari's case, (64 IA 40 : AIR 1937 PC 37) it is equally clear that sub section (2) of Section 240 though it obviously does not apply in the case of dismissal by the Crown itself, is a statutory term of the service of the Crown, and is mandatory and not permissive. It follows that the dismissal of the respondent by an authority subordinate to that by which he was appointed would be unlawful and inoperative under that section. But the appellant relies on another section in the same Chapter (chap. II) of

the Act of 1935 as releasing it from the obligation prescribed in sub section (2) of Section 240 namely, section 243, which provides:

> "243. Notwithstanding anything in the foregoing provisions of this chapter, the conditions of service of the subordinate ranks of the various police forces in India shall be such as may be determined by or under the Acts relating to these forces respectively." There was no dispute that the respondent held a subordinate rank in the appellant's police force, and the issue was confined to two questions, (1) whether the right of dismissal was a "condition of service" within the meaning of Section 243 and (2) whether, at the time of the respondent's dismissal, there was a valid police rule in operation which authorised dismissal of the respondent by the Deputy Inspector-General, although the latter was subordinate in rank to the officer by whom he had been appointed.

9. On the first question, apart from consideration whether the context indicates a special significance to the expression "conditions of service," their Lordships are unable, in the absence of any such special significance, to regard provisions which prescribe the circumstances under which the employer is to be entitled to terminate the service as otherwise than conditions of the service, whether these provisions are contractual or statutory; they are therefore of opinion that the natural meaning of the expression would include such provisions. In the second place, it will be found, on a perusal of chap. II, which includes Sections 240 to 263, that sub sections (2) and (3) of Section 240 are the only provisions of chap. II to which the introductory words of Section 243 can be referable in relation to conditions of service, as every one of the other provisions of the chapter, with one exception, deals with special classes of service, just as Section 243 deals with a special class. The one exception is sub section (1) of Section 240 but that provides for termination by His Majesty, and there can be no question of delegation of that power by virtue of section 243. Their Lordships need only notice one of these other sections, as it was referred to in argument by both parties, namely, section 241, sub sections (2) and (4). The opening words of sub section (2) - "Except as expressly provided by this Act, the conditions of service of persons serving His Majesty in a civil capacity in India" - relate to the very same persons dealt with in the immediately preceding section 240, and this exclusion from the power of making rules conferred by sub section (2) of Section 241 points unmistakably, in their Lordships opinion, to the express provisions of Section 240 so as to prevent their alteration by rules. There are, of course, other provisions of the Act which will also fall under the exception provided in sub section (2) of Section 241 but

there can be no doubt, in their Lordships' opinion, that the provisions of Section 240 prescribe conditions of service which are covered by the exception. Sub-Section (4) of Section 241 contains a similar exception to the powers conferred. Their Lordships are, accordingly, of opinion that the right of dismissal was a condition of service within the meaning of section 243.

10. The Federal Court set aside the order of dismissal of the respondent's suit by the Courts below, on the ground that the bearing of Section 240(2) had not been sufficiently realised by them, and that, on a proper construction of Sections 240 and 243, the dismissal of the respondent was void and inoperative. The construction of Section 240 by the Federal Court was similar to that expressed by the Federal Court in Lall's case : (AIR 1948 PC 121) and is fully dealt with in the judgment of the Board in that case, to which reference may be made. On construction of Section 243 the Federal Court held that "conditions of service" did not include provisions as to dismissal, a view contrary to that just expressed by their Lordships.

11. The second question arises in this way: The respondent was dismissed on 25th April 1938, admittedly under Rule 16.1 of chap. XVI of the N.W.F.P. Police Rules, 1937, which authorises the dismissal or removal of a Sub-Inspector of Police by the Deputy Inspector-General. That Rule is contained in Vol. II of these Rules, which has the year 1938 on the title page, below a statement that it was printed and published by the Manager, Government Stationery and Printing, North West Frontier Province, Peshawar. There was no indication as to the date when the Rules became binding on the Police Service. At the hearing before the Board, Vol. I, which might clear the matter up, was stated to be out of print or unobtainable, and counsel for the appellant asked their Lordships to assume in his favour that that date was subsequent to 1st April 1937, when the Government of India Act of 1935 came into force thereby obviating the invalidity of the 1934 correction slip, which would equally apply to the 1937 Rules, if issued before 1st April 1937. After the hearing was closed, their Lordships thought it right, in view of the difficulties of making such an assumption, and in the true interests of the parties, to suggest to them that further enquiries should be made to see whether vol. I of the Rules could not be made available. The result of these enquiries was that the respondent, at considerable expense, has recovered a copy of the missing volume, and has lodged an affidavit dated 30th December 1947, as to the relevant passages, and the appellant has agreed that that affidavit should be accepted as evidence before their Lordships, in order to save the time and expense of having the volume transmitted to this country. These passages consist of a verbatim

reproduction of the title page and preface, and also a similar reproduction from the title pages of chaps. I and II of the same volume, which adds nothing further that is material.

12. The title page states that they are "The N.W. F. P. Police Rules, 1937. Issued by and with the Authority of the Local Government under Sections 7 and 12 of Act 5 of 1861." The word "Local" has been replaced by the word "Provincial" by a correction slip No. 68, which may be taken, on comparison with the dates of correction slips 66 and 73, as having been made in 1939. The name of the Government printer and publisher and year 1938 is at the foot of the page, as in vol. II. The preface, which is signed by the Inspector-General of Police on and January 1937, and refers to the revision of the 1917 Edition of the Rules, which had been proceeding since 1933, opens with an important passage as follows: "The North-West Frontier Province Police Rules as now issued are binding on all police officers and are an authoritative guide to others concerned. No alterations in the Rules may be made except on receipt of correction orders approved and issued by the Provincial Government and after decision by His Excellency the Governor under section 56, Government of India Act, 1935."

13. In the opinion of their Lordships, only one reasonable inference can be drawn from these facts : viz, that the revision of the 1917. Rules was completed in January 1937, in view of the coming into operation of the Act of 1935 on 1st April 1937, and that they were not issued so as to become operative until they had been put into print and were published in 1938. It may be noted that the first correction slip was dated 14th January 1939.

14. Accordingly, their Lordships are of opinion that the Rule under which the respondent was dismissed was a valid rule, made by the appellant under the authority conferred on it by section 243, Government of India Act, 1936. This Conclusion negatives the respondent's claim for arrears of pay.

15. Following on the remit of the case to the Court of the Judicial Commissioner by the order of the Federal Court dated 4th December 1941, the respondent obtained a decree for payment of Rs. 2283 against the present appellant in respect of arrears of pay from the date of dismissal to the institution of the suit on 17th June 1939, made by the Court of the Judicial Commissioner on 4th July 1942.

16. Special leave to appeal against the judgment of the Federal Court dated 4th December 1941 was given inter alia on condition that the order as to costs of the

Federal Court should stand and that the costs of the respondent in the appeal should be borne by the appellant as between solicitor and client in any event.

17. Their Lordships are of opinion that the appeal should be allowed, that the judgment and decree of the Federal Court dated 4th December 1941, should be set aside except as to costs, and that the decree of the Court of the Judicial Commissioner dated 19th September, in so far as it dismisses the suit, should be restored. Their Lordships will humbly advise His Majesty accordingly.

18. The appellant will pay the respondent's costs of this appeal as between solicitor and client. The respondent asked that their Lordships should direct that, having no solicitor and having appeared in person before the Board, the cost of his passage to this country and back to India and his cost of maintenance in London should be treated as costs between solicitor and client. He further asks that he should be entitled to recover the cost of the purchase price of Vol. I of the Police Rules, which he states as Rs. 600. While their Lordships feel unable to make any order as asked for, they desire to point out for consideration of the appellant that if the respondent had employed a solicitor and counsel, the outlays would have been recoverable under the condition imposed in granting special leave, and that the recovery of the volume in question may well have been vital to their success on the main point in issue in the appeal.

Lord da Parcq (part II) : (Delivered on 4.11.1948). - On 18th March 1948, a judgment was delivered by the late Lord Thankerton, in which their Lordships stated the reasons which led them to the conclusion that they should humbly advise His Majesty that this appeal should be allowed. Their Lordships do not propose now to repeat what was then said. It suffices to say that the decision of the Board was given on the assumption, which then appeared to be justified, and had not, indeed, been questioned, that the Police Rules of 1937, to which the judgment refers, had become operative in the year 1938, and at some date prior to 25th April 1938, when the respondent was dismissed from the force.

2. Subsequently to the delivery of the judgment, and before their Lordships had tendered their advice to His Majesty, the respondent submitted a petition wherein he prayed that their Lordships might reconsider their decision, mainly on the ground that it had been ascertained that the Police Rules of 1937 were in fact printed and published on 29th April 1938, that is to say, four days after the dismissal of the respondent.

3. Their Lordships accordingly found it necessary to hear further argument and on 29th July 1948, counsel for both parties appeared at their Lordships' bar. It

was then admitted that the Police Rules of 1937 were in truth printed and published on 29th April 1938, as the respondent alleged. It follows, in the opinion of their Lordships, that, applying the reasoning contained in the judgment previously delivered, they can only come to the opposite conclusion to that which they had formed on what is now shown to be an erroneous assumption as to a material fact.

4. At the hearing on 29th July of this year counsel for the appellant made an alternative submission to the effect that the rule on which the appellant relies came into force immediately upon its approval by the Governor in Council, and stated that, according to his instructions, that approval was signified on 17th April 1936. Assuming these instructions to be correct, and further assuming (though without deciding) that the approval of the Governor in Council brought the rules immediately into effect, their Lordships are of opinion that, as against the respondent, the rule in question would none the less be inoperative, since the Government of India Act, 1935, under which the rule would have been valid against him, did not come into force until 1st April 1937 and could not then retrospectively affect the respondent's position.

5. On 6th August 1948, their Lordships caused a letter to be addressed to the Solicitor representing the appellant, informing him that their Lordships now proposed humbly to advise His Majesty that the appeal should be dismissed, and stating that the order as to costs would not be varied. The letter pointed out that if this advice were tendered, and if His Majesty were pleased to accept it, the effect would be that the declaratory judgment of the Federal Court would stand. Finally, the letter referred to the award of Rs. 2283 to the respondent by the Court of the Judicial Commissioner which according to a submission made by the appellant's counsel was open to challenge and inquired whether the appellant wished to have an opportunity of satisfying their Lordships that the point was open, and of being heard upon it. By their Lordships' direction, a copy of this letter was sent to the respondent.

6. Their Lordships have now received an intimation that the appellant does not wish to offer any further argument in this case. The respondent, as his counsel stated when the matter was last before the Board, does desire an opportunity of arguing that he shall now be awarded arrears of pay from the date of the institution of his suit on 17th June 1939. Their Lordships do not propose to deal further with this matter. If, in accordance with their Lordships' humble advice, the declaratory judgment of the Federal Court is restored, it will be open to the

respondent to pursue any remedy which flows from that declaratory judgment in the appropriate Court. Their Lordships must not be understood, however, as expressing an opinion that the respondent was entitled as of right to recover the earn of Rs. 2283 which was awarded to him, or that he has any claim to a further sum in respect of arrears of pay. It is unnecessary, owing to the very proper attitude of the appellant, to express any view as to the former question, and the latter question does not arise in this appeal, which is from the decision of the Federal Court. If that decision is affirmed the respondent, who did not himself enter an appeal, cannot now ask for anything more.

7. Their Lordships will humbly advise His Majesty that the appeal should be dismissed, and that the judgment and decree of the Federal Court dated 4th December 1941, should be affirmed. The appellant must pay the respondent's costs of this appeal as between solicitor and client.

Appeal dismissed.

Cases Referred.

1. (1936) 64 IA 40: (AIR 1937 PC 27)

2. , (AIR 1948 PC 121)