R. P. Kapur

Vs

Pratap Singh Kairon & Others

Civil Appeal No. 75 of 1963

(P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta JJ)

02.08.1963

JUDGMENT

DAS GUPTA J. –

The appellant, R. P. Kapur, was appointed to the Indian Civil Service almost 25 years ago. He continued in the service after the independence of India and since 1948 has been serving the Government of Punjab. On the 18th July 1959, when the appellant was serving as Commissioner, Ambala Division, he was placed under suspension. A few months before this, two criminal cases had been instituted against him. The first of these was instituted on December 10, 1958, by one M. L. Sethi against Kapur and his mother-in-law, Kaushalya Devi, on allegations of offences under section 420 and section 120B of the Indian Penal Code. The second was instituted on the complaint of one M. L. Dhingra on allegations of offences under section 55(2) of the Prevention of Corruption Act, 1947 and sub-section 167, 168, 406, 420 and 465 of the Indian Penal Code. This complaint was submitted by Dhingra to Sardar Pratap Singh Kairon, the Chief Minister of Punjab, on February 27, 1959. Action on this case was taken under the orders of the Chief Minister and a first information report was recorded on the basis of this complaint at Chandigarh Police Station on March 4, 1959. Several other cases were instituted against the appellant and some of his relations after this, during the year 1960, including one instituted on the basis of a report by Daryao Singh, Inspector of Police, C.I.D., Karnal. This report which bears the date November 1, 1959, alleged that the appellant had committed offences under section 166, section 167 of the Indian Penal Code read section 109 of the Indian Penal Code and also under section 5(2) of the Prevention of Corruption Act. This report was forwarded by Daryao Singh to the Secretary, Orphanage Advisory Board, Chandigarh, in connection with the affairs of which Board the offences were said to have been committed; it was sent by the latter to the police for registration of a case and investigation, only on May 25, 1960. The criminal cases which were pending in the courts of different magistrates of the Punjab were on appellant's application transferred by this Court to criminal courts subordinate to the Allahabad High Court for disposal in the State of Uttar Pradesh.

Two of these case, one under section 107 of the Indian Penal Code in which the appellant's wife was made an accused, and the other under section 145 of the Indian Penal Code in which also she figured as an opposite party, were disposed of in March and April 1961, the proceedings in both cases being dropped by an order of the Additional District Magistrate, Saharanpur. In the case instituted on Dhingra's complaint the investigation appears to have been completed in August-September 1959, and in February 1960, the Government of Punjab applied to the Central Government for sanction to prosecute the appellant under section 5(2) of the Prevention of Corruption Act, 1947 as required under section 6(c) of that Act. The Government of India was however reluctant to accord sanction and on June 2, 1960, the Government of India (Home

Department) wrote to the Chief Secretary to the Government of Punjab indicating the view of the Central Government that the such prosecution was not likely to succeed and also that as Kapur was already involved in two criminal cases and would be facing his trial in those cases, any action to prosecute him in a third case, might look like chasing a man who was already in serious trouble. In this letter the Punjab Government was requested to consider whether it was necessary to pursue that particular case just then.

The Government of Punjab does not appear to have pressed its request for sanction and ultimately on the 25th May 1961 the Police submitted the final report in the case under s. 173 of the Code of Criminal Procedure praying that the case "should be consigned to record as untraced". On the same date the Magistrate made an order directing the case "to be consigned to record as untraced". A similar report was on the same date submitted by the Police to the Magistrate in the cases started on the report of Daryao Singh and the Magistrate made an order directing the case to be filed as untraced and to be sent to record. On the next date, the 26th of May 1961 an order was made in the name of the Governor of Punjab directing and enquiry against the appellant under the Public Servants (Inquiries) Act, 1850. Later in the judgment we shall refer to this Act as "the inquiries Act". The order was in these words :-

> "Whereas the Governor of Punjab is of opinion that there are good grounds for making a formal and public inquiry into the truth of certain imputations of misbehaviour against Shri R. P. Kapur, I.C.S., Commissioner (under suspension) :
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> "Now, therefore, in exercise of powers conferred by section 2 of the Public Servants' (Inquiries) Act 1850, the Governor of Punjab hereby orders a formal and public inquiry to be made into the truth of the imputation of misbehaviour, the substance whereof has been drawn in articles of charge, against the said officer."

It may be mentioned here that some of these charges are in respect of acts alleged against the appellant in Dhingra's complaint while the other charges are in respect of acts alleged against him in Daryao Singh's report.

Eight articles of charges were drawn up for the purpose of the enquiry. Another order was made by the Governor on the same date appointing Mr. Justice D. Falshaw, then a puisne Judge of the High Court of Punjab, as Commissioner for holding the enquiry. Notice was duly served on the appellant of these orders and also of the article of charge; and he was informed that the Inquiry would commence on August 28, 1961. On July 18, 1961, the appellant applied to the Punjab High Court under Art. 226 of the Constitution praying for an order striking down the order of the Governor dated the 26th May, 1961, for making the enquiry against him. Other prayers were that the order appointing Mr. Justice Falshaw as Commissioner for the Inquiry and the notice on the petitioner be also struck down; a writ of quo warran to be issued against Mr. Justice Falshaw and a writ of Prohibition against the Commissioner not to proceed with the inquiry.

It is obvious that the real relief that the appellant sought by this petition was that the order to hold the inquiry should be stuck down. The other reliefs prayed for are either superfluous or irrelevant.

The averments in the petition cover a large number of grounds but the principal ground on which the appellant based his prayer may be summarised thus :-

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(1) That no inquiry could could be held under the Inquiries Act inasmuch as first information reports had already been lodged under the Code of Criminal Procedure in respect of the acts mentioned in the article of charge;

(2) That s. 2 of the Inquiry Act was bad as the word "misbehaviours" was too vague; and so, the section gave the Government uncontrolled and uncanalised power to subject Government servants to inquiries under the Act;

(3) That an inquiry under this Act was more drastic and less advantageous to an officer in the position of the appellant than an inquiry that could be held against an officer in a similar position under the All India Services (Discipline and Appeal) Rule, 1955, hereinafter referred to as "the 1955 Rules" and thus resulted in infringement of Art. 14 of the Constitution;

(4) That the Inquiries Act violates Arts. 16, 21 and 20(3) of the Constitution and is therefore invalid;

(5) That the Government has acted mala fide in ordering the inquiry.

The High Court rejected all the contentions and dismissed the petition. Against that order this appeal has been filed with special leave of this Court.

In support of the appeal all the grounds raised in the High Court have been urged again before us. After the arguments were concluded, we reserved judgment for considering the matter raised. When we were considering these it appeared to us that a further question which required consideration, though it had not been raised before us on behalf of the appellant, was whether under the terms of s. 2 of the Public Servants (Inquiries) Act, 1850, the Punjab Government was competent to direct this enquiry under the Act. On the face of it this question appeared under the Act. On the face of it this question appeared to be concluded by the decision of this Court in Sardar Kapur Singh v. Union of India. As we were of opinion that some matters involved in the question required further consideration by a larger Bench, these were accordingly referred to a Bench of seven learned Judgment today. On the majority decision of the Bench it is now finally settled that the Punjab Government was competent to direct the inquiry. We shall therefore now proceed to consider the points originally raised by the appellant in support of his appeal.

The first and indeed the most important question of law raised by the appellant, who argued the appeal himself with considerable ability and restraint, was that no disciplinary proceedings can be commenced against a Government servant for any act in respect of which a first information report has been recorded under s. 154 of the Code of Criminal Procedure.

At one stage of his arguments the appellant put his propositions in an even wider form and submitted that on propositions in an even wider form and submitted that no inquiry except under the Code of Criminal Procedure can be held at all in respect of any offence under the Indian Penal Code or any other law. For this proposition he relied on ss. 5 of the Code of Criminal Procedure. That section lays done in its first sub-section that all offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained; and in its second sun-section that all offences under any other law shall be investigated, inquired into, tired and otherwise dale with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, enquiring into,

trying or otherwise dealing with such offences. The appellant emphasise the use of the words "otherwise dealt with" in this section and contends that the provision of the Code of Criminal Procedure have to be followed not only for investigation, inquiry or trial of offences but also for dealing with them in any other manner, thus including an inquiry into the truth of the imputations, for the purposes of disciplinary action. We do not think the words "otherwise dealt with" has the significance which the appellant attaches to these. "Otherwise dealt with" in the section refers in our opinion, to such dealing with offences as is provided for in the provision of the Code apart from the provision for investigation, enquiry or trial. Such provision for in the provision of the Code apart form the provision for investigation, enquiry or trial. Such provision are to be found in the Code, for instance, in Chapters IV and V. Thus, the provision in section 54 of the Code for an arrest by a police without warrant in certain case may come into operation even before any investigation, enquiry or trial in connection with an offence has commenced. It is unnecessary to multiply instances but it seems to us clear that the use of the words "otherwise dealt with" in s. 5 does not justify a conclusion that inquiries in connection with disciplinary proceedings on the basis of offences alleged to have been committed by the Government servant must also be held in accordance with the provision of the Code Criminal Procedure.

In any case, then argues the appellant, at least when a first information report has been under s. 154 of the Code of Criminal Procedure any enquiry under the Inquiries Act or any other Rules for a disciplinary action must be held to be barred. The argument may best be put thus : Once a first information report has been lodged under s. 154 of the Code of Criminal Procedure an investigation into the correctness of the allegations made in the report will proceed under Chapter XIV of the Code of Criminal Procedure. Under s. 173 of the Code every such investigation has to be completed without unnecessary delay and as soon as it is completed the officer-in-charge of the police station has to forward to the Magistrate empowered to take cognizance of the offence on a police report, a report as regards the results of the investigation. Such a report may either ask the Magistrate to take cognizance of an offence which according to the police investigation the accused person appears prima facie to have committed or it may state that on such prima facie case has been made cut. Cases may occur where though an offence has, in the opinion of the investigation officer, been committed, no clue to the identity of the culprit is found or even if such clue is found the culprit is untraced. It is urged by the appellant that where on investigation a prima facie case is made out against a Government servant the truth to falsity of the allegations can best be ascertained finally by enquiries or trials in the criminal court that would follow. Where on the other hand, the police officer finds that no prima facie case has been made out it would be reasonable to think that the truth of the allegations has not been established. In either case, it is said, there is no scope for the truth of the allegations of the commission of an offence by a Government servant being investigation by any departmental inquiry.

At first sight it does seem reasonable that when a first information report has been recorded against a Government servant that he has committed a cognizable offence the truth of the same should be ascertained only in an inquiry or trial by the criminal court when a prima facie case is found by the investigation and a charge-sheet is submitted. When once that has been done there is no need for any further inquiry in the same matter. It seems no less reasonable that if the police on investigation finds that no case is made out for submission of a charge-sheet the allegation should be held to be untrue, or doubtful and then also there is no need for any further inquiry in the same matter. We are convinced that in most cases it would be proper and reasonable for Government to await the result of the police investigation and where the investigation is followed by an inquiry or trial the result of such inquiry or trial, before deciding to take any disciplinary action against any of its servants. It would be proper and reasonable also, generally, for Government not to take action against a

government servant when on investigation by the police, it is found that no prima facie case has been made out. Even though this appears to be a reasonable course which we have no doubt is and will ordinarily be followed by Government, we are unable to see any legal bar to the government ordering a departmental enquiry even in a case where a first information report under s. 154 having been lodged an investigation will follow.

The appellant's next argument is that the word "misbehaviour" in s. 2 of the Inquiries Act is vague and consequently the Act is bad. "Misbehaviour" by a government servant would certainly mean a lapse by him form the proper standard of conduct in the discharge of his functions as a government servant; but the appellant argues that there was at the date of the Act in 1850 no ascertainable standard of conduct and so neither the government nor it servants could know certain what would amount to "misbehaviour". This arguments seems to us to be misconceived. Even in the absence of any detailed instructions or directions as to how a government servant should act and conduct himself there would never be any manner of doubt that a government servant was expected and required to act honestly and not to use his position as a government servant for enriching himself or others. Every dishonest act of a government servant, including acts by which he uses his position for enriching himself or others would clearly amount to "misbehaviour". We are unable therefore to accept the appellant's argument that the word "misbehaviour" as used in s. 2 of the Inquiry Act is vague.

It may be pointed out in this connection that even if the appellant is correct in his connection that even of the Act in 1850 no ascertainable standard of conduct for government servants had been laid down this argument is not available to his after such standard was clearly laid down in the numerous Government Servants' Conduct Rules. So far as the appellant himself is concerned he was as the date if the order made by government in 1961, governed by the All India Services Conduct Rules, 1954. The attack on the validity of the Inquiries Act on the ground that the word "misbehaviour" is vague must therefore fail.

The next attack on the validity of the Act is on the ground that the it is discriminatory inasmuch as the procedure and provisions of the Inquiries Act are more drastic and less advantageous than those of the 1955 Rules. It is well settled that where the government is invested with authority to direct an enquiry in one of two alternative modes and one of the modes is more drastic and less advantageous than the other, an order directing an enquiry under the more drastic and less advantageous mode will amount to an infringement of Art. 14 of the Constitution as the more advantageous and less drastic mode may be applied against another government servant similarly circumstanced. We are not satisfied however that the procedure and provisions of the Inquiries Act are in substance less advantageous and more drastic than the 1955 Rules as contended for by the appellant. It may by mentioned that in Sardar Kapur Singh's Case ([1960] 2 S.C.R. 569.) when a somewhat similar argument was raised against the validity of the Inquiries act on the allegation that it was more drastic and less advantageous than an enquiry under Rule 55 of the Classification Rules, this Court contrasted and compared the provisions of the Inquiries Act with Rule 55 of the Classification Rules and held that there was no substantial difference between the two alternative modes of enquiry, The procedure of enquiry under the 1955 Rule is practically the same as under Rule 55 of the Classification Rules.

Faced therefore with the decision in Kapur Singh's Case (Supra) the appellant tried to persuade us the procedure and provisions of an enquiry under the 1955 Rules were more advantageous to a government servant than those of the Inquiries Act in the following respects which were not considered in Kapur Singh's Case (Supra) as those advantages were not available under the

Classification Rules. These advantages, according to the appellant, are : (1) Under sub-rule 4 of Rule 5 of the 1955 Rules the government servant may request for access to official records for the purpose of preparing his writer statement, but there is no such provision in the Inquiries Act; (2) Under sub-rule 7 of the same Rule a Board of Inquiry shall contain at least one member who shall be an officer of the service to which government servant belongs. There is no such provision in the Inquiries Act; (3) Under sub-rule (9) of the Rule the member of the service charged shall be supplied with a copy of the report of enquiry, whereas there is no such provision under the inquiries Act; (4) Under the proviso to sub-rule (9) mentioned above, if the punishing authority disagrees with any part or whole of the findings of the Board of Inquiry or the Inquiry Officer, the point or points of such disagreement together with a brief statement of the grounds thereof, shall also be communicated to the member of the service. There is no similar provision under the Inquiries Act.

We do not think that these provisions under sub-rules 4, 7 and 9 and the provision to sub-rule 9 of Rule 5 result in any substantial difference between an enquiry under the Inquiries Act and an enquiry under the 1955 Rules. While it is true that there is no express provision in the Inquiries Act for an access to official records for the purpose of preparing the officer's written statement such as there is in sub-rule 4, we see no reason to think that similar facilities will not be allowed by the authority holding an enquiry under the inquiries Act. It has to be noticed that under sub-rule 4 the access to such records may be refused "if in the government's opinion such records are not strictly relevant to the case or it is not desirable in the public interest to allow such access". We have no doubt that in an enquiry under the Inquiries Act also the authority holding the enquiry will afford the officer proper facilities of access to official records for the purpose of preparing his written statement except where these appear to be irrelevant or it is satisfied on an objection made the Government that it is not desirable in the public interest to allow such access. It is reasonable to expect that in actual practice there will be no difference in the matter of access of official records as between an enquiry under the Inquiries Act an enquiry under the 1955 Rules.

The appellant's contention that in an enquiry under the 1955 Rules he will have the benefit of having an officer of the service to which he belongs taking part in the enquiry while he cannot have this benefit in an enquiry under the Inquiries Act appears to be misconceived. Sub-rule 5 of Rule 5 leaves it to the discretion of the government to appoint either a Board of Inquiry or an Inquiry Officer to enquiry into the charges. Indeed, under that sub-rule if the government does not consider it necessary to appoint a Board of Inquiry Officer or an Inquiry Officer the enquiry may be held into the charges "in such manner as it deems fit". It is only when a Board of Inquiry is appointed that sub-rule 7 comes into operation and at least one of members of the Board has to be an officer of the service to which the member of the service belongs. It is wrong to think therefore that in an enquiry under the 1955 Rules the officer will necessarily have the advantage - if it is an advantage - of having an officer of the service to which be belongs taking part in the enquiry. There is also nothing to prevent the government to have the enquiry held by an officer of the service to which he belongs even in an enquiry under the Inquiries Act. It is clear therefore that the provisions of sub-rule 7 does not mean any real difference between the two modes of enquiry.

Coming now it sub-rule 9 we find that it provides for a copy of the report of the enquiry to be supplied to the member of the service after the punishing authority has arrived at a provisional conclusion that a penalty of dismissal, removal, compulsory retirement or reduction in rank should be imposed. The Inquiries Act contains no such provision; but the member of the service will be entitled to get the report under the provision of Art. 311(2) of the Constitution in all cases of proposed dismissal, removal or reduction in rank. The only difference is that while under this Rule the officer will be entitled to get a copy of the report even where a punishment of compulsory

retirement is proposed, the provisions of Art. 311(2) of the Constitution will have no application to such a case, so that he will not, if the enquiry is held under the Inquiries Act, get the benefit of having a copy of the report under the Inquiries Act if the penalty of compulsory retirement is proposed. It is unnecessary however it consider in the present case whether this difference amount to a violation of Art. 14 of the Constitution. For it is clear to us that the penalty of compulsory retirement which can be imposed under the 1955 Rules (See R. 3) cannot be imposed on an officer in the position of the present appellant in view of Art. 314 of the Constitution. The appellant did not contest that this consequence will flow from Art. 314.

It appears to us also that just as under the proviso to sub-rule 9 the point or point of disagreement with grounds thereof have to be furnished to the officer concerned where the punishing authority disagrees with any of the findings of the report, the same result flows from Art. 311(2) of the Constitution. This was held by this Court in a recent decision - State of Assam v. Bimal Kumar Pandit ([1964] 2 S.C.R. 1.). There is therefore no substance in the appellant's contention that the procedure and provisions of the Inquiries Act are less advantageous and more drastic than an enquiry under the 1955 Rules. The contention that the Inquiries Act violates Art. 14 of the Constitution is therefore rejected.

It is not easy to understand the appellant's further contention that the Inquiries Act contravenes Art. 16 and Art. 20(3) of the Constitution. Article 16 guarantees to all citizens equality of opportunity in matters relating to employment or appointment to any office under the State. That guarantee is however no bar to disciplinary action being taken against a citizen who holds an office under the State. The fact that the result of such disciplinary action may be that a citizen is deprived of promotion cannot possibly be held to be a denial of equality of opportunity relating to employment or appointment. The appellant also suggested that the provision in section 15 of the Inquiries Act that a person accused shall be required to make his defence, infringes Art. 20(3) of the Constitution Art. 20(3) provides that no persons accused of any offence shall be compelled to be a witness against himself. It is difficult to understand how a provision that an accused shall be required to make his defence amounts to compelling the accused to be a witness against himself. Under this section the accused is not even compelled to make his defence. The section merely compels the Inquiring authority to require the accused to make a defence. If the accused chooses not to make any defence s. 15 could not compel him to do so. The argument that the Inquiries Act contravenes Art. 16 or Art. 20(3) of the Constitution is wholly misconceived and is rejected.

This brings us to the question whether the Government of Punjab acted mala fide in ordering the enquiry. The appellant's case so that he incurred the several displeasure and hostility of the Punjab Chief Minister, Sardar Pratap Singh Kairon and for this the Chief Minister has been bent upon his ruin. To this end, it is said, the Chief Minister instituted criminal cases against the appellant and even against his wife, mother and mother-in-law through his own creatures in the expectation that he would get them convicted and sent to prison and thereafter have the appellant dismissed on the basis of his own convection. As the cases were transferred for trial to courts in Uttar Pradesh and by May 1961 two of the cases had been disposed of against the prosecution, the Chief Minister felt apprehensive that the other criminal cases might also end in the acquittal or discharge of the appellant. So, he hit upon the plan of having an enquiry under the Inquiries Act on the basis of allegations made in the two cases, viz., Dhingra's complaint and Daryao Singh's report being apprehensive that even these cases, if charge-sheet were submitted in court, might be transferred to court outside Punjab and were likely to end in the acquittal or discharge of the appellant. The appellant urges that the statement in the Order that the Governor was of opinion that there were good grounds for making a formal and public enquiry into the truth of certain imputations of

misbehaviour against him, was false, and that the real purpose was not to ascertain the truth of the imputations but to harass and humiliate him and if possible to impose penalties on him by way of disciplinary action whether or not the imputation were true or false.

The appellant has not been able to produce before us materials to explain why the Punjab Chief Minister should be personally hostile to him. There are several circumstances however which seem to suggest that whatever be the reason the Punjab Chief Minister is not friendly to the appellant. The appellant repeatedly drew our attention to the manner in which the Chief Minister took it upon himself to accept a complaint of serious changes against a senior officer like the appellant and directed the Additional Inspector-General "to take immediate action in taking over papers from Government Departments concerned and the papers with Shri Dhingra", and to the direction given by him to the Additional Inspector-General to give "a prima facie report". In a previous decision(R. P. Kapur v. Sardar Pratap Singh Kairon [1961] 2 S.C.R. 143.) of this Court observed thus :-

> "We do not know reasons led the Chief Minister to make the endorsement on the complaint of Dhingra as he did and why instead of referring the complaint to the officer in charge of the police station, a reference was made to the Additional Inspector-General of the Criminal Investigation Department. It is not clear why he ordered the seizure of the papers before even a prima facie report was given in respect of an offence said to have been committed five years ago."

The Court then proceeded to point out that these were matters on which the Chief Minister alone was in a position to enlighten the Court and that "the Chief Minister owned a duty to this Court to file and affidavit stating what the correct position was so far as he remembered". Even through the appellant made a pointed reference to the Chief Minister's endorsement on Dhingra's complaint and also set out this Court's observation on the easier occasion the Chief Minister did not file any affidavit even on the present occasion throwing any light on the circumstances under which he acted in this, to say the least, unusual manner. There is the further circumstance that even through after the investigation of Dhingra's case was completed, the Government of Punjab did ask for the Central Government's sanction to prosecutor the appellant under s. 5(2) of the Prevention of Corruption Act, the Government of Punjab waited for about a year after the Government of India expressed its reluctance to give the sanction, before taking further action in the matter. The manner in which the police proceeded in the matter after this long delay also appears to be unusual. For, instead of submitting a charge-sheet for the offences found to have been committed by the appellant, the Police Inspector merely asked the Magistrate to consign the case to record as untraced. This is a most curious procedure, apparently unknown to law. The learned Advocate-General, who appeared for the State of Punjab, was unable to explain how the case could be started as "untraced". It may well happen in some cases the culprit is untraced. But we do not understand how the case can be untraced. It is surprising that the police should make such a request to the Magistrate in the circumstances of Dhingra's case. It is even more surprising and indeed it is a matter which has caused us deep concern, that the Magistrate readily did what the police requested him to do. The papers produced before us show that in his report to the Magistrate the Inspector, C.I.D., mentions the fact that this course had been decided upon in consultation with "higher authorities". Apparently that was what the Magistrate decide. We were not enlightened as to who these "higher authorities" were.

On the same date, i.e., May 25, 1961, a similar report was submitted by the police to the Magistrate in the case instituted on the basis of Daryao Singh's report and the Magistrate readily passed a similar order. That report itself had been made by Daryao Singh on November 1, 1959 stating that

he had discovered during the course of investigation of another case that the several offences mentioned in the report had been committed by the appellant. There was a delay of more than six months before this report was forwarded to the police. It is not possible to say clearly from the papers on the record when the investigation by the police was completed. That it was completed has not been disputed before us. It is not known whether the investigation officer found a case made out for the submission of charge-sheet. All that we find is that on May 25, 1961, that is, a year after the first information report was recorded and a year and six months after Daryao Singh made the report, the Magistrate granted a request of the police that the case should be treated as untraced.

Not unnaturally the appellant has laid great stress on the conduct of the police in connection with these two cases. Why, asks the appellant, did the "higher authorities" under whose directions the police acted, decide to treat these cases as untraced and at the same time start an enquiry under the Inquiries Act in respect of some of the allegations in these very cases ? If the intention of the Government was to ascertain the truth of these imputations, he asks, why was it decided to discard the usual and obvious method of enquiry into these in a court of law in favour of the unusual method of an enquiry under the Inquiries Act ? The learned Advocate-General did not attempt to answer these question; but he argued that when two alternative methods were open to the Government for ascertaining the truth of the allegations, the mere fact that one was adopted in preference to the other is no reason to suspect mala fides. The appellant, on the other hand, strenuously contends that when the conduct of the police in connection with these two cases is considered in the back-ground of the previous history of the criminal cases instituted against the appellant, the manner in which the Chief Minister himself acted in connection with Dhingra's complaint, the fact that five criminal cases against the appellant or the persons in whom he was interested were transferred to courts in Uttar Pradesh and the further fact that at the date when we are considering the matter all these cases have ended in favour of the appellant, it is reasonable to think that the enquiry under the Inquiries Act was adopted more as a measure of persecution of the appellant than the ascertainment of the truth of the imputations against him. Even if we assume that these facts by themselves might afford some ground for such a conclusion, we are of opinion that when considered along with other circumstances to which our attention has been drawn, this conclusion would not be justified.

For holding the enquiry the Government has appointed a Judge of the High Court of Punjab. It is reasonable to think therefore that the enquiry would be fair and impartial. It is true, as pointed out by the appellant, that the Government is not in law, bound to accept the report of the Inquiring Authority. It has to be noticed however that the power of the Government to impose any penalty on the appellant will be limited by the provisions of the 1955 Rules. It is clear also that the appellant will be entitled to the rights of appeal under the 1955 Rules. The penalties which can be imposed are set out in Rule 3. Of these penalties, the penalty No. 5, viz., compulsory retirement on proportionate pension, cannot be imposed on the appellant in view of Art. 314 of the Constitution. The other two penalties mentioned in cls. 6 and 7 of Rule 3, viz., dismissal or removal from service, cannot be imposed except by an order of the Central Government. As regards penalties which can be imposed by the State Government Rule 6 provides that no order imposing such penalty shall be passed by the Government except after consultation with the Public Service Commission and where there is a difference of opinion between the State Government and the Public Service Commission the matter shall be referred to the Central Government whose decision thereon shall be final. If therefore it does happen that the Inquiring Authority finds the appellant not guilty as regards some or all the changes and the Government considers him guilty of those charges, even so the Government will not be in position to impose any penalty on him unless either the Public Service Commission or the Central Government takes the same view. If a penalty is imposed by the State Government with the

concurrence of the Public Service Commission, the member of the service has a right of appeal to the Central Government. The Circumstances in which an appeal can be withheld by the State Government are set out in Rule 14. These, in our opinion, do not interfere with the proper and reasonable exercise of the right of appeal.

A consideration of all these provisions makes it reasonable to think that seven if the Punjab Chief Minister was unfriendly to the appellant he could not expect to harm him by having recourse to an enquiry under the Inquiries Act in preference to a trial in a criminal court. It is therefore not possible for us to accept as correct the appellant's contention that the inquiries Act was being used only as a device to harass and humiliate him or to impose penalties on him in any case, nor that the statement in the Order that the Governor was of the opinion that there were good grounds for making a formal and public inquiry into the truth of certain imputations of misbehaviour, was false. We hold that the appellant's case that the Government of Punjab has acted mala fide in ordering the enquiry against him has not been established.

There remains for consideration the question whether the enquiry under the Inquiries Act can go on so long as the appellant's complaint against Dhingra which is pending in the criminal court has not been disposed of. This complaint was made by the appellant in the court of the Magistrate, First Class, Chandigarh, alleging that the case instituted against him by Dhingra was false and that Dhingra himself had by making this complaint committed offences under ss. 93, 204, 211 and 385 of the India Penal Code. We are informed that the hearing of this case is in progress in the court of a Magistrate in U.P. The appellant contends that the holding of the enquiry under the Inquiries Act ordered against him would amount to contempt of court. The argument is that the appellant's case in his complaint being that the allegations made by Dhingra in his complaint against the appellant are false, the criminal court is engaged in examining the truth or otherwise of those allegation of Dhingra, and an enquiry under the Inquiries Act would involve the examination of witnesses on the same questions. This, it is said, will tend to interfere with the proper determination of the question by the criminal court and so amount to contempt of the criminal court. We do not think it necessary to decide this question for the purpose of the present case. For, whether or not the holding of such a parallel enquiry under the Inquiries Act would amount to contempt of the criminal court, we are clearly of opinion that it is wholly undesirable that the enquiry under the Inquiries Act should be held at the same time when the trial before the criminal court is going on. No particular reason has been shown to exist which makes the immediate commencement of the enquiry essential or otherwise desirable. We think it proper therefore that the enquiry under the Inquiries Act should not proceed so long as the appellant's complaint against Dhingra is not finally disposed of.

While therefore, we have came to the conclusion that the High Court rightly refused to issue to the appellant writs prayed for to quash the Government's order for enquiry against him and the other prayers maintained in the petition, we direct that the enquiry should not take place a long as to appellant's complaint against Dhingra is not finally disposed of. The parties will bear their own costs.

Appeal dismissed

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