FEDERAL HIGH COURT

The Punjab Province

Vs

Tara Chand

Civil Appeal No. 1 of 1946

(Spens, C.J., Zafrulla Khan and Kania, JJ.)

11.04.1947

JUDGMENT

Zafrulla Khan, J.

1. Shorn of details that are no longer relevant, the facts of this ease are as follows : The respondent was appointed Sub-Inspector of Police by the Deputy Inspector General of Police; Punjab, on 2-1-1911. On 19-3-1938, the Superintendent of Police, Amritsar, an officer subordinate to the Deputy Inspector General of Police, recorded an order purporting to dismiss the respondent from service. After exhausting his remedies by way of departmental appeal, the respondent instituted a suit on 14-4-1942 against the Punjab Province claiming a declaration that the order of the Superintendent of Police of 19-3-1938 was void and of no effect inasmuch as it was made by an officer subordinate to the authority by which the respondent had been appointed and thus contravened the direction laid down in Section 240(2), Constitution Act. He also claimed arrears of pay from 20-3-1938 till 2-1-1941, the date on which he was normally due to retire from service. The trial Court gave the respondent the declaration prayed for but dismissed his claim for arrears of pay as not maintainable. On appeal a Division Bench of the Lahore High Court reversed the trial Court's finding on the last point, but holding that by virtue of Art. 102, Sch. 1, Limitation Act, the respondent was entitled to recover arrears of pay only in respect of such period of his service as fell within three years immediately preceding the institution of the suit, gave him a decree for L 2860, a sum representing 22 months' salary at the rate of L 130 per mensem. A certificate under section 205(1), Constitution Act was granted by the High Court. The defendant has come up on appeal to this Court. The respondent has filed cross-objections claiming arrears of pay for the whole period from, 20-3-1938 till 2-1-1941.

2. In view of the judgment of this Court in *Suraj Narain Anand v. North West Frontier*[1] *Province* counsel for the appellant conceded that the purported order of dismissal made by the Superintendent of Police on 19-3-1938 was void and of no effect. His contention was that the plaintiff had no right to maintain a suit against the Crown or its representative for recovery of arrears of pay.

3. It is necessary to point out that this is not a case for recovery of damages for wrongful

dismissal as was sought to be contended at one stage by counsel for the appellant. The order of 19-3-1938 purporting to dismiss the respondent having been made by an authority that had been expressly debarred by section 240 (2), Constitution Act from making it was utterly void of all effect. It was in the eye of the law no more than a piece of waste-paper. The position is that the respondent was never legally dismissed from service and continued in law to be a Sub-Inspector of Police till the date on which he was under the conditions of his service due to retire. He was thus entitled to draw his salary for the period of his service after 19-3-1938. The only question on this part of the case is whether he could recover the amount of that salary by means of a suit.

4. In *(41) 1941 F.C.R. 37 : A.I.R. 1942 F.C.3 : I.L.R. (1941) Kar. (F.C.) 165 : I.L.R. (1942) Lah 692 : 198 I.C. 7 (F.C.),(Supra) Suraj Narain Anand v. North West Frontier Province* this Court made certain observations as to the nature of the relief to which a plaintiff would be entitled in a case like the one before us. It was there said:

> It remains to consider what relief the plaintiff is entitled to, on the footing that the order of dismissal was void and inoperative. The plaintiff claims that he is entitled to a declaration to that effect. The decision in Rangachari's case" seems to us to support this contention, though a declaration was in fact refused in that case on other grounds. The plaintiff is obviously not entitled to any relief by way of damages for wrongful dismissal. As the case has been disposed of by the Courts below on the preliminary issue, we are not in a position to say what other questions remain to be tried before the nature of the reliefs to be awarded to the plaintiff can be finally determined. It seems to us best in the circumstances to say that the plaintiff was at least entitled to a declaration that the order of dismissal passed against him was void and inoperative, and that the Courts below were not justified in dismissing the suit as wholly unsustainable.
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> We accordingly set aside the decree of the Judicial Commissioner's Court and remit the case with a declaration that there shall be substituted for the decree appealed against a declaration in the terms above stated, with such further directions as the circumstances of the case may require in the light of the observation's in this judgment.....

5. On receipt of this Court's judgment, the Judicial Commissioner's Court remanded the case to the trial Court to hear and determine the plaintiff's claim to arrears of pay. The trial Court passed a decree in favour of the plaintiff for a certain sum in respect of arrears of pay. The plaintiff being dissatisfied with the amount of the decree carried the matter again on appeal to the Judicial Commissioner's Court. That Court increased the amount awarded to the plaintiff by a certain sum. Against the decree of the Judicial Commissioner the plaintiff sought to move this Court by application which was dismissed on the ground that he could only come up by way of appeal under section 205, Constitution Act, [*Suraj Narain Anand v. North West Frontier Province*[2]]. The Court went on, however, to observe:

> There appears to be some force in his complaint that arrears of pay should have been awarded to him not merely up to the date of the institution of the suit, but to the date of a valid order of dismissal. We are, however, not in a position to say whether this point was urged before the Judicial Commissioner or why the award has-been so limited. As the

> claim relates to a period subsequent to the institution of the suit the petitioner may have a separate remedy in respect of the same, But this involves no constitutional question and we do not see how this Court is entitled to deal with it at this stage.

6. In *Secretary of State v. I.M. Lall*[3], Hall this Court was called upon to deal with a case in which it found (by a majority) that the plaintiff bad been dismissed from the service of the Crown without having been given a reasonable opportunity of showing cause within the meaning of sub-S. (3) of section 240, Constitution Act. On the question of the relief to be granted in such a case the majority observed:

> That leaves only the actual remedy to be considered. As indicated earlier, Mr. Lall is not in our judgment entitled to a declaration that he has never been dismissed or that he still remains a member of the Service. His proper remedy was in our judgment damages for wrongful dismissal in breach of the statutory obligations imposed by sub-s. (3) of Section 240.

7. A consideration of these two judgments shows that this Court has been of the opinion that in cases where a servant of the Crown is dismissed in contravention of the directions laid down in sub-s. (2) or sub-s. (3) of section 240 be has a remedy against the Crown which he can enforce by suit. In. *(41) 1941 F.C.R. 37 : A.I.R. 1942 F.C.3 : I.L.R. (1941) Kar. (F.C.) 165 : I.L.R. (1942) Lah 692 : 198 I.C. 7 (F.C.)(Supra), Suraj Narain Anand v. North West Frontier Province* the Court held that where the direction contained in sub-s. (2) of section 240 had been contravened the servant of the Crown was entitled to a declaration that the order of dismissal was void and inoperative but it did not go on to determine whether he would be entitled to any further and, if so, what relief. The observation set out above from the order of the Court in *Secy. of State v. I.M. Hall, AIR 1945 FC 47 : 1945 F.C.R. 103* (Supra) appears to indicate that the Court assumed, though without debate, that the plaintiff would in such a case be entitled to recover arrears of pay. Where a servant of the Crown had been dismissed in contravention of the provisions of sub-s. (3) of Section 240 the Court held that his remedy was damages for wrongful dismissal.

8. In *Abdul Vakil v. Secy. of State*[4], a case very similar to the one before us, the Chief Court of Oudh gave the plaintiff a decree for arrears of pay and the same course was adopted by the Nagpur High Court, *Hifzul Qadeer v. Provincial Government, C.P. and Berar*[5]*.,*

9. It was, however, contended on behalf of the appellant that a servant of the Crown held office during his Majesty's pleasure and ' could be dismissed at will and that consequently he had no right to maintain a suit to recover arrears of pay. It was further contended that even if salary had been earned and had become payable in respect of any period no suit could be maintained for its recovery inasmuch as the payment of salary by the Crown was a matter of bounty and was not a matter of legal right vesting in the public servant. It was urged that the Crown was by prerogative exempt from liability to be sued by its servants for recovery of pay and that the prerogative could not be derogated from by any contract express or implied between the Crown and its servants providing for payment of salary. The only manner in which the prerogative could be limited or modified was by statute.

10. This last proposition appears to us to run counter to the observations of their Lordships of the Judicial Committee in *Reilly v. The King Lord Atkin*[6], delivering the judgment of the Judicial

Committee in that case observed:

> The petition of right is founded on averments that there was a contract between the suppliant and the Crown and that the contract had been broken, Both Courts in Canada have decided that by reason of the statutory abolition of the office, Mr. Reilly was not entitled to any remedy, but apparently on different grounds. Maclean J. concluded that the relation between the holder of a public office and the Grown was not contractual. There never had been a contract; and the foundation of the petition failed. Orde J.'s judgment in the Supreme Court seems to admit that the relation might be at any rate partly contractual; but he holds that any such contract must be subject to the necessary term that the Crown, could dismiss at plea sure. If so, there could have been no breach.
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> Their Lordships are not prepared to accede to this view of the contract, if contract there be. If the terms of the appointment definitely prescribe a term and expressly provide for a power to determine "for cause" it appears necessarily to follow that any implication of a power to dismiss at pleasure is excluded. This appears to follow from the reasoning of the Board in (1896) 1896 A.C. 575 : 65 L.J.P.C 82 : 75 L.T. 110, Gould T, Stuart That was not the case of a public office, but in this connection the distinction between an office and other service is immaterial. The contrary view to that here expressed would defeat the security given to numerous servants of the Crown in judicial and quasi-judicial and other offices throughput the Empire, where one of the terms of their appointment has been expressed to he dismissal for cause.

11. It may be conceded that in the absence of express limitation a public servant in India holds office during His Majesty's pleasure. This has been recognised and given statutory effect in sub-s. (i) of section 240, Constitution Act. It has, however, been made subject to the express provisions of the Constitution Act some of which are set out in the remaining sub-sections of section 240. These provisions operate as limitations upon the applicability of the doctrine of tenure during His Majesty's pleasure. It seems to us very doubtful whether the doctrine itself imports anything more than that the period of tenure of office of a servant of the Crown is liable to be terminated at His Majesty's pleasure and that in the absence of any express provision binding upon the Crown guaranteeing to a public servant a tenure terminable on other conditions a public servant may be dismissed from office at will. It follows, of course, that where office is held during pleasure and is terminated at pleasure no claim can possibly arise to salary or remuneration in respect of a period subsequent to such termination. It is only in this sense that it may be said that where office is terminable at pleasure no claim to payment of salary or remuneration can arise after the pleasure has been exercised.

12. Section 240 runs as follows:

> (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.
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> (2) No such person as aforesaid shall be dismissed from the service of His Majesty by any

authority sub ordinate 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 in regard to him :

Provided that this sub-section shall not apply-

(a) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction, on a criminal charge; or

(b) where an authority empowered to dismiss a person or reduce him in rank is satisfied that (of some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause.

(4) Notwithstanding that a person holding a civil post ' under the Crown in India holds office during His Majesty's pleasure, any contract under which a person, not being a member of civil service of the Crown in India, is appointed under this Act to hold such a post may, if the Governor-General, or as the case may be, the Governor, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation if before the expiration of an agreed period that post is abolished or he is for reasons not connected with any misconduct on his part, required to vacate that post.

13. Sub-sections (2), (3) and (4) are statutory limitations upon the, right of the Crown to dismiss its servants at will. To the extent to which they go they are designed to confer security of tenure upon public servants. Sub-section (4) deals with a special class of case. Counsel for the appellant was constrained to admit that a person entitled to receive compensation under that sub-section could recover the amount of the compensation by suit, if payment was withheld though no, right of suit is expressly conferred by that sub section. It was also conceded that a public servant dismissed in contravention" of the direction contained sub-s. (2) of Section 240 was entitled to maintain a suit for a declaration, that the purported dismissal was void. It was con-, tended, however, that in such a case no further relief could be given. There is nothing in the language of the section that compels us so to limit the relief that ought to follow upon a contravention of its provisions.

14. It is useful to recall that while sub-ss. (1) and (2) of section 240 reproduce the provisions of Section 96B, Government of India Act, 1915 sub-s. (3) enacts in the form of a statutory provision that which theretofore had been only a matter of statutory rule. Sub-section (4) is new. We are of the view that Parliament enshrined these provisions in the body of the Act deliberately in order to provide public servants with safeguards the contravention of which should give them a right of action for appropriate relief. The distinction between the consequences Sowing from the contravention of a statutory rule, such as the provision corresponding to Section 240(3) then was and the contravention of a statutory provision itself, such as the provision corresponding to Section 240(2) contained in section 96B Government of India Act, 1915, is well brought out in the judgments of the Judical Committee in, *R. Venkata Rao v. Secretary of State*[7], *R.T.*

Rangachari v. Secretary of State In the last case their Lordships observed:

> ..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 statute from making it rests upon an illegal and improper foundation.

15*., Attorney-General v. De Keyser's Royal Hotel Lord Atkinson*[8] in the course of his speech quoted with approval a passage from a judgment of the Master of the Rolls to the following effect:

> Those powers which the executive exercises without Parliamentary authority are comprised under the comprehensive term of the prerogative. Where, however, Parliament has intervened and has provided by statute for powers, previously within the prerogative, being exercised in a particular manner and subject to the limitations and provisions contained in the statute, they can only be so exercised. Otherwise, what use would there be in imposing limitations, if the Crown could at its pleasure disregard them and fall back on prerogative?
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> Lord Atkinson went on to observe:
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> I further concer with him in his analysis of the provisions of the Acts passed in 1803, 1804, 1819 dealing with the public service. I agree that in all this legislation there is not a trace of a suggestion that the Crown was left free to ignore these statutory provisions, and by its unfettered prerogative do the very things the statutes empowered the Crown to do but free from the conditions and restrictions imposed by the statutes.
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> It is quite obvious that it would be useless and meaningless for the Legislature to impose restrictions and limitations upon, and to attach conditions to, the exercise by the Crown of the powers conferred by a statute if the Crown were free at its pleasure to disregard these provisions, and by virtue of its prerogative do the very thing the statutes empowered it to do. One cannot in the construction of a statute attribute to the Legislature (in the absence of compelling words) an intention so absurd. It was suggested that when a statute is passed empowering the Crown to do a certain thing which it might theretofore have done by virtue of its prerogative the prerogative is merged in the statute. I confess I do not think the word "merged" is happily chosen, I should prefer to say that when such a statute, expressing the will and intention of the King and of the three' estates of the realm, is passed it abridges the Royal Prerogative while it is in force to this extent : that the Crown can only do the particular thing under and in accordance with the statutory provisions, and that its prerogative power to do that thing is in abeyance. Whichever mode of expression be used, the result intended to be indicated is, I think, the same namely, that after the statute has been passed, and while it is in force, the thing it empowers the Crown to do

> can thenceforth only be done by and under the statute, and subject to all the limitations, restrictions and conditions by it imposed, however unrestricted the Royal Prerogative may theretofore have been.

16. It is thus obvious that the prerogative right of the Crown to dismiss its servants at will having been given statutory form in sub-s. (1) of section 240 it can only be exercised subject to the limitations imposed by the remaining sub-sections of that section and it must follow as a necessary consequence that if any of those limitations is contravened the public servant concerned has a right to maintain an action against the Crown for appropriate relief. There is in our judgment no warrant for the proposition that that relief must be limited to a declaration and should not go beyond it.

17. It was urged that apart from the prerogative of the Crown to terminate the service of any of its servants at will there was the further prerogative that no servant of the Crown could maintain an action against the Crown to recover arrears of pay even after the pay had been earned and had become due and that this prerogative had been preserved in the case of India by section 2, Constitution Act. In support of the first part of this proposition reliance was placed upon *Lucas v. Lucas*[9] and the observations of Lord Blackburn in *Mulvenna v. The Admiralty*[10] quoted therein.

18. The short answer to the argument based on section 2, Constitution Act, is that assuming, but by no means admitting, that such a prerogative obtains or did obtain in England and assuming further that the language of the opening part of the section is intended to include prerogatives of the Crown it must be presumed that this prerogative had been abandoned in the case of India. That the will of the Crown to abandon a particular branch of its prerogative in respect of any territories may be collected from Treaties, Charters, Regulations, Statutes or other circumstances was recognised in *(1836) Mayor of Lyons v. East India Co. at page*[11] *285*.

19. In *Lucas v. Lucas Pilcher J.*[12] had to consider the question whether the sterling overseas pay of an Indian Civil Servant was a debt owing or accruing within the meaning of R. 1 of 0. 45 of the Rules of the Supreme Court which could be attached in satisfaction of an order for the payment of alimony. The learned Judge relying mainly upon the dictum of Lord Blackburn in *Mulvenna v. The Admiralty* [13]that public policy forbids a servant of the Crown successfully prosecuting any action against the Crown in respect of unpaid salary answered the question in the negative. In the course of his judgment he observed:

> ....The real point for decision in this case is this. If for any reason Mr. Lucas while continuing to hold his appointment in the Indian Civil Service and to discharge his duties, failed to receive the salary appropriate to his rank, or any salary, could he maintain an action in respect of the salary so unpaid against the Crown through its appropriate officer? If no such action could successfully be maintained by Mr. Lucas, it cannot be successfully argued by his wife that this is, even in the words of Order 45, Rule 1, a debt owing or accruing from the Crown through the appropriate officer to Mr. Lucas in respect of salary unpaid. While a study of the material sections of the various Government of India Acts might leave an Indian civil servant who was minded to take action against the Crown in respect of salary unpaid in very considerable doubt as to the appropriate officer to name as a defendant, there is, in my view, nothing in any of those Acts which lends any colour

to the suggestion that Indian civil servants have been placed in a more privileged position than other servants of the Crown in respect of rights of action arising out of their appointment or their conditions of service against the Crown through its appropriate officer or department. While it would, no doubt, be competent to His Majesty by appropriate legislation to confer on his servant a right of action against his appropriate minister or department, the conference of such a right would be unusual, and one would expect to find it provided for in the most explicit terms, To discuss the sections of the Acts to which I was referred would merely be tedious, and, it is sufficient for me to say that, in my view, the position of Mr. Lucas and other members of the Indian civil service in regard to actions against the Crown or its appropriate office arising out of their employment as servants of His Majesty is quite unaffected by the various provisions of the Government of India Act.

20. The point that the learned Judge had to decide was a very narrow one, namely, whether the whole or any portion of the salary of a member of the Indian Civil Service was liable to attachment in England in satisfaction of a judgment-debt. If the learned Judge was seeking to discover how the law stood with regard to that matter in India he would have found it set out in section 60 and the other relevant provisions of the Civil Procedure Code. To these, it appears, the learned Judge's attention was, unfortunately, not invited. So far as this country is concerned the salary of a public servant once it has become payable has always been treated as a debt due to him which is liable to attachment in satisfaction of a decree against him : see (70) 7 Bom. H.C.R.A.C. 110, Tejram Jagrupaji v.Kusaji That was a case decided under the provisions of Act 8 [VIII] of 1869.

21. The relevant portions of section 60, Civil Procedure Code of 1908 run as follows:

(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses, or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely:

(i) the salary to the extent of the first hundred rupees and one-half the remainder:

Provided that where such salary is the salary of a servant of the Crown or a servant of a railway company Or local authority, and the whole or any part of the portion of such salary liable to attachment has been under attachment, whether continuously or intermittently for a total period of twenty-four months, such portion shall be exempt from

attachment until the expiry of a further period of twelve months and, where such attachment has been made in execution of one and the same decree, shall be finally exempt from attachment in execution of that decree;

(j) the pay and allowances of persons to whom the Indian Army Act, 1911, or the Burma Army Act applies or of persons other than commissioned officers to whom the Naval Discipline Act as modified by the Indian Navy (Discipline) Act, 1934, applies ;

(k)* * * *

(l) any allowance forming part of the emoluments of any servant of the Crown or of any servant of a railway company or local authority which the appropriate Government may by notification in the official Gazette declare to be exempt from attachment, and any subsistence grant or allowance made to any such servant While under suspension;

.....

Explanation 1. - The particulars mentioned in clauses (g), (h), (i), (j), (l) and (o) are exempt from attachment or sale whether before or after they are actually payable and in the case of salary other than salary of a servant of the Crown or a servant of a railway company or local authority the attachable portion thereof is exempt from attachment until it is actually payable.

Explanation 2. - In clauses (h) and (i) 'salary' means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (1) derived by a person from his employment whether on duty or on leave.

22. It is clear that this section treats all 'salaries including salaries of servants of the Crown as debts and as such liable to attachment. If the section had no proviso or explanation' attached to it its effect would have been merely to continue the law as it had stood under Act 8 [VIII] of 1859, that is to say, that the whole of the salary of a public servant was liable to attachment but could be attached only after it had become payable. The effect of clause (i) of the proviso, is that the salary of a servant of the Crown is exempt from attachment to the extent of the first hundred rupees and one-half the remainder, subject to the further proviso set out in the clause. The inference from Explanation 1 is that the attachable portion of the salary of a servant of the Crown may be attached before or after it becomes actually payable.

23. Attention may also be drawn to Order 21, Rule 43, sch. 1, Civil P. C, which prescribes the procedure for the attachment of the salary of a public servant. It runs as follows:

(1) Where the property to be attached is the salary or allowances of a servant of the Crown or of a servant of a railway company or local authority, the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of Section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct ; and, upon notice of the order to such officer as the appropriate

Government may by notification in the official Gazette appoint in this behalf:

(a) where such salary or allowances are to be disbursed within the local limits to which this Code for the time being extends, the officer or other person whose duty it is to disburse the same shall withhold and remit to the Court the amount due under the order, or the monthly instalments, as the case may be ;

(b) where such salary or allowances are to be disbursed beyond the said limits, the officer or other person within those limits whose duty it is to instruct the disbursing authority regarding the amount of the salary or allowances to be disbursed shall remit to the Court the amount due under the order, or the monthly instalments as the case may be, and shall direct the disbursing authority to reduce the aggregate of the amounts from time to time to be disbursed by the aggregate of the amounts from time to time remitted to the Court.

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by the appropriate Government in this behalf shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall without further notice or other process, bind the appropriate Government or the railway company or local authority, as the case may be, while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits if he is in receipt of any salary or allowances payable out of His Majesty's Indian revenues or the funds of a railway company carrying on business in any part of British India or local authority in British India; and the appropriate Government or the railway Company or local authority, as the case may be, shall be liable for any sum paid in contravention of this rule.

24. Sub-rule (3) is significant. Its effect is that save where an attachment order is returned in accordance with the provisions of sub-rule (2) not only is the order binding on Government but failure to obey it renders Government liable for the amount which could have been stopped out of the judgment-debtor's pay. By virtue of these provisions of the Civil Procedure Code the disbursing officer is bound in obedience to a proper order of attachment to remit the attached amount to the Court issuing the attachment for payment to the judgment-creditor. If he fails to do so and the amount is paid out to the judgment debtor Government is liable to make the amount good to the decree-holder. Surely all this is utterly inconsistent with any notion of a public servant salary being a matter of the bounty of the Crown.

25. For us to hold that while a creditor of a servant of the Crown was entitled as of right to compel the Crown to pay to him a substantial portion of the salary of such servant in satisfaction of a decree obtained against him the servant himself had no right to sue the Crown for recovery of arrears of pay, would be to lend our authority to an absurd proposition against which we must guard ourselves.

26. It may also be desirable to mention that by section 292, Constitution Act it is expressly provided that all the law in force in British India immediately before the commencement of Part 3 of the Act is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. Part of the law so in force in British India was the Civil Procedure Code of 1908. The result is that the very Act containing Section 240 itself confirms the provisions of the Civil Procedure Code above referred to. Section 240(1) must therefore be read not only with the sub-sections following but also with the relevant provisions of the Civil Procedure Code.

27. We must accordingly conclude that a servant of the Crown in India has the right to maintain a suit for recovery of arrears of pay which have become due to him. We agree with the learned Judges of the High Court that the respondent was in this case entitled to a decree for arrears of pay.

28. Both sides asked our leave to raise the question of limitation and leave was granted. It was urged on behalf of the appellant that the claim for arrears of pay was governed by Art. 115 and not by Art. 102 of Sch. I, Limitation Act. On behalf of the respondent it was contended that Art. 131 or failing that Art. 120 was applicable. We do not consider that either of these contentions is sustainable. Article 102 applies to suits for wages not otherwise provided for by the Schedule and covers in our judgment a suit to recover arrears of pay. For the respondent it was sought to be argued that pay or salary was not included in the term "wages". We do not see any warrant for placing so narrow a construction upon the word "wages" used in Art. 102. The word occurs in Art. 7 but that Article is limited in its operation to suits for the wages of household servants, artisans or labourers. It occurs again in Art. 101 which is a specific Article governing suits for seaman's wages. In Art. 102 it is intended in our judgment to cover all claims for wages, pay or salary, not otherwise expressly provided for in any other Article of the Schedule.

29. Article 115 is applicable to suits "for compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for." The period of limitation under this Article is the same as under Art. 102, namely, three years and it begins to run "when the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases." We do not consider that on the face of it, this Article is applicable to this suit but if it were we fail to see how the appellant would be better off under this Article than under Art. 102. It is obvious that if this was a case of breach of contract there were successive breaches at the end of each month and the respondent would still be entitled to recover arrears of pay which fell due within a period of three years before the institution of the suit. On this being pointed out, counsel conceded that that was so and the point was not further pressed.

30. Article 131 applies to suits to establish a periodically recurring right. The period of limitation provided by the Article is 12 years and begins to run when the plaintiff is first refused the enjoyment of the right. A claim to recover arrears of pay is manifestly not one to establish a periodically recurring right.

31. Article 120 is applicable to suits for which no period of limitation is provided elsewhere in the Schedule. In our judgment the period of limitation for a suit to recover arrears of pay is provided for in Art. 102 and Art. 120 is thus not applicable.

32. In *Abdul Vakil v. Secy. of State*[14], the learned Judges of the Oudh Chief Court applied Art. 120 to a claim for arrears of pay. They relied upon *(93) 20 Cal. 51 (F.B.) Secy. of State v. Guru Prosbad Dhur*[15] *Raja of Vizianagram v. D.C. Thammanna and* [16]*Secy. of State v. Lodna Colliery Co., Ltd*. In none of these cases the claim was for the recovery of arrears of pay.

33. We agree with the learned Judges of the High Court that the claim to recover arrears of pay is governed by Art. 102.

34. The appeal fails and is dismissed with costs.

Kania J. - 35. I agree. As the rights of a civil servant under the Crown have been discussed at length in the light of Section 240, Constitution Act I desire to express my views on the point.

36. In *(41) 1941 F.C.R. 37 : 29 A.I.R. 1942 F.C.3 : I.L.R. (1941) Kar. (F.C.) 165 : I.L.R. (1942) Lah 692 : 198 I.C. 7 (F.C.)(Supra), Suraj Narain Anand v. North West Frontier Province* this Court held that if a person holding a civil post under the Crown in India was ordered to be dismissed by any authority subordinate to that by which he was appointed, the order was inoperative and of no effect so far as the civil servant was concerned. That decision is regarded as binding on this Court. The question, therefore, is whether in the present case after such an inoperative order was served on the respondent he had a right to claim any salary in a Court of law against the Crown.

37. It was contended for the appellant that every civil servant, except in special cases where it is otherwise provided by law, held office under the Crown during His Majesty's pleasure. It was urged that under the Common Law of England this has been accepted without any question : *De Doshe v. Reg.* (Not reported. Decided by the House of Lords on 25.11-1886 and referred to in *(1896) 1 Q.B. 116, Dunn v. The Queen)*. Strong reliance in this connection was placed on *(1943) L.R. 1943 P. 68 : 112 L.J.P. 84 : 168 L.T. 361 ; 1943 2 All E.R. 110, Lucas v. Lucas(Supra)* where Pilcher, J. following the observations of Lord Blackburn in *(1926) 1926 S.C. 842, Mulvenna v. The Admiralty(Supra()* held that it was an implied term of the employment of a civil servant that he could be dismissed at His Majesty's pleasure and that he had no right to claim through a Court of law the salary during the period he had served the Crown. In that case the question arose in England on an attempt by the wife or the civil servant to attach money alleged to be payable to him for salary for the period he had worked 'under the Crown, that application for attachment was dismissed. On behalf of the appellant it was argued that Section 240(1)' Constitution Act recognizes the principle that a civil servant holds office 'during His Majesty's pleasure and that is a prerogative of the Crown. It was urged that the question of salary was either a part of the same prerogative or was an independent' prerogative of the Crown. If it formed part of the same prerogative, section 240(1) recognised it and the Court should therefore give effect to it. If it formed part of a separate prerogative, the same remained unaffected because of section 2, Government of India Act, 1935. Omitting words which are not material to the present discussion, that section runs as follows:

> All rights belonging to His Majesty the King Emperor of India which appertain or are incidental to the Government of the territories in India for the time being vested in him are exercisable by His Majesty except in so far as may be otherwise provided by or under this Act or as may be otherwise directed by His Majesty.

It was contended that Section 240 (2) and (3) limited the right of dismissal but did not give any remedy to the civil servant.

38. In my opinion, these contentions cannot be accepted. The decided cases to which our attention has been drawn have nowhere held that this alleged prerogative of the Crown in respect of non-liability to pay salary, has been extended to India. In *(1895) 1895 A.C. 229 : 64 L.J.P.C. 119 : 72 L.T. 130 : 43 W. R 637, Shenton v. Smith Lord Hobhouse(Supra)* at page 235 expressly pointed out that this was not any special prerogative of the Crown but an implied or understood term of public service. The salary is described in some English decisions as a bounty, but I do not find any decision to support the contention that the option not to pay the salary is a prerogative of the Crown. If it is not a prerogative of the Crown, it is not saved by Section 2(1), Government of India Act, 1935. Moreover, in order to succeed, the appellant has to show not merely that it was a prerogative of His Majesty the King as recognised in England or by the English Courts. He has further to show that it is a prerogative which appertains or is incidental to the Government of the territories in India for the time being vested in His Majesty and was in existence before the Constitution Act came into force. Nothing is shown to that effect. With the exception of *(1943) L.R. 1943 P. 68 : 112 L.J.P. 84 : 168 L.T. 361 ; 1943-2 All E.R. 110, Lucas v. Lucas(Suupra)* no decision or statute is pointed out which recognizes such right as existing in respect of territories in India for the time being vested in His Majesty. According to Keith's Constitution of England (Edn. 1940) vol. 2, p. 367, the question of the liability of the Crown to pay salary is not settled in England. In *(1934) 1934 A.C. 176: 21 A.I.R. 1934 P.C. 60 : 148 I.C. 637 : 103 L.J.P.C. 41 : 150 L.T. 384, Reilly v. The King Lord Atkin(Supra)* at p. 179 observed as follows:

> In this particular case their Lordships do not find it necessary to express a final opinion of the theory accepted in the Exchequer Court that the relations between the Crown and the holder of a public officer are in no degree constituted by contract. They content themselves with remarking that in some offices at least it is difficult to negative some contractual relations, whether it be as to salary or terms of employment, on the one hand, and duty to serve faithfully and with reasonable care and skill on the other, And in this connection it will be important to bear in mind that a power to determine a contract at will is not inconsistent with the existence of a contract until so determined.
>
> These observations support the view that the right to dismiss at pleasure is only an implied term of service under the Crown, and not a special prerogative.

39. If this right is treated as a part of the right which is embodied in section 240(1), the question is one of construction. In *(1920) 1920 A.C. 508 : 89 L.J. Ch. 417 : 122 L.T. 691, Attorney-General v. De Keyser's Royal Hotel* (Suupra)it has been pointed out by Lord Atkinson that when a prerogative is embodied in a statute the question is whether the field of the prerogative is intended to be taken by the statute. If so nothing of the prerogative recognised under the Common Law-remains to support the claim: the same must be based on the wording of the statute alone. It is a question of abridgement of the privilege and the statute alone has to be looked into to find out what remains of the Common Law doctrine. The prerogative power to do that thing is in abeyance! It is therefore necessary to ascertain from the words used in section 240 what the Legislature intended to do. Sub-section (1) records the Common Law doctrine that service under the Crown is during His Majesty's pleasure. The matter does not end there

however, Sub-section (2) puts one limitation on the power to dismiss and provides who can dismiss a civil servant. Sub-section (3) contains a statutory provision of what steps should be taken before a civil servant could be dismissed. It may be noted that under the Government of India Act of 1915 there was no such provision in the Act itself. The rules which were framed under the Act contained a similar provision. That, however, was construed by the Judicial Committee in *R.T. Rangachari v. Secretary of State, AIR 1937 PC 27 : 166 Ind. Cas. 513 : 1937-45-LW 139* (Supra)as standing on a different footing, because the rules could be altered by the Governor-General. When enacting the Government of India Act of 1935, the Parliament thought fit to include sub-section (3) as a part of the Statute itself. That creates another limitation on the right to dismiss. Sub-section (4) is new. In England it has been held that even if there was an express contract made by a representative of the Crown with the servant to employ him for a fixed number of years that provision was against public policy and the right to dismiss at His Majesty's pleasure remained unaffected. It has been further held there that after the civil servant was employed under such a contract if he was dismissed he can have no claim for damages or compensation. Bearing in mind this state of the law in England, sub-s. (4) of section 240 should be carefully noted. It permits the employment of a civil servant by the Governor General under a contract to hold such post for a certain period and further permit the con-tract that if the employment was terminated before the agreed period, for reasons not connected with any misconduct on his part, he should be paid compensation. It should be noted, that this sub-section also does not expressly provide for a right to sue the Crown. On a plain reading of the sub-section, however, it is clear that a right to sue under those circumstances must be considered as given to the civil servant. The word contract means an enforceable agreement. Enforceable must be at law. The stipulation about payment of compensation further supports that view. It will be meaningless to permit a contract for payment of compensation without there existing any remedy to enforce it. Such an intention cannot be imputed to the Imperial Parliament. If, therefore, under sub-cl. (4) a suit is permissible there is no reason why a suit cannot be permitted to enforce the rights given under sub-ss. (2) .and (3), It was argued that the aggrieved person may file a suit to obtain a declaration that the provisions of sub-s. (2) and/or (3) were not complied with. Apart from the difficulty created by the words used in Section 42, Specific Relief Act, under which declaratory decrees are granted, such view is poor satisfaction to the aggrieved employee. It was argued that on such declaration being obtained the administrative side of the Government are expected to respect the Court's decision and make payment. If the Legislature, instead of leaving the provision in sub-s. (3) in the realm of rules only, as had been done under the Government of India Act of 1915 and also in the case of Dominions (see *(1934) 1934 A.C. 176: 21 A.I.R. 1934 P.C. 60 : 148 I.C. 637 : 103 L.J.P.C. 41 : 150 L.T. 384, Reilly v. The King*)(Supra) though fit to include that in the Constitution Act itself, it is difficult to assume that the Legislature left the question of payment to the administrative side of the Government and therefore made no provision for payment. A more rational reading of the whole section is that in all the three cases such remedy as the Law under the circumstances permitted was left to the aggrieved civil servant. The argument that the privilege to the extent of the express words used in sub-ss. (2) and (3) only was waived cannot be accepted because the same argument would prevent a suit being filed by the civil servant under sub-cl. (4), as it does not expressly provide for enforcing the payment of compensation by a civil suit. Neither in England nor in the Dominions any legislation like sub-ss. (2), (3) or (4) of section 240, Constitution Act, has been pointed out, No decision of the English Courts showing, the effect of such provisions in a Statute has been cited at the Bar.

40. The question whether the law in England and India is the same on this point should be further

considered having regard particularly to the provisions found in the Civil Procedure Code. In this connection, Section 60(1) and cls. (i) and (j) of the proviso, and explanation (2) should be noted. Under section 60, all-property belonging to the judgment-debtor is liable to be attached. In stating the particulars of what may not be attached and sold, exemption to a limited extent is given in respect of the salary of a public servant. These provisions of the Civil Procedure Code were not noticed in *(1943) L.R. 1943 P. 68 : 112 L.J.P. 84 : 168 L.T. 361 ; 1943 2 All E.R. 110, Lucas v. Lucas(Supra)* as the application was made in England and the Civil Procedure Code of 1908 did not apply there. The provisions of section 60, Civil P. C, give a right to the creditor to attach the salary of a servant of the Crown. There can be no dispute about that. If the contention of the appellant was accepted, the result will be that while the civil servant cannot recover the money in a sum against the Crown, his creditor can recover the same in execution of a decree against the civil servant. This right of the creditor to receive money in that manner has been recognised in innumerable decisions of all High Courts. There were similar provisions in the Civil Procedure Code of 1882 also. By reason of Section 292, Constitution Act, the Code of Civil Procedure of 1908 continues in force, in spite of the repeal of the Government of India Act of 1915. Could the Imperial Parliament in enacting Section 240 and being deemed aware of the provisions of Section 60, Civil Procedure Code have thought it proper to give this privilege to a creditor, while denying it to the officer himself? To hold so, the words of section 240, Constitution Act, will have to be unduly and unnaturally strained. Moreover in Explanation 2 of 3. 60 the word 'salary' is defined. In the proviso to Section 60, cl. (i) the word 'salary' is used as applicable to private employees and to Government servants also. The word 'salary' in respect of a private employee must mean an enforceable right to receive the periodical payments mentioned in the Explanation. In that connection it is not used in the sense of a bounty. It will, therefore, be improper to give the same word, when used with regard to a civil servant under time Crown, a different meaning in the same clause. It seems to me, therefore, that the Imperial Parliament has not accepted the principle that the Crown is not liable to pay its servant salary for the period he was in service, as applicable to British India or as forming part of the doctrine that service under the Crown is at His Majesty's pleasure.

41. On the remaining points I have nothing to add. I agree that the appeal should be dismissed with costs.

Cases Referred.

1(41) 1941 F.C.R. 37 : A.I.R. 1942 F.C.3 : I.L.R. (1941) Kar. (F.C.) 165 : I.L.R. (1942) Lah 692 : 198 I.C. 7 (F.C)
2(42) 1942 F.C.R. 113 : A.I.R. 1942 F.C. 47 : I.L.R. (1942) Kar (F.C.) 116 : I.L.R. (1944) Lah. 553 : 203 I.C. 389 (F.C)
3AIR 1945 FC 47 : 1945 F.C.R. 103
4AIR 1943 Oudh 368
5AIR 1945 Nagpur 190 : AIR 185 1944 NULL 32
6(1934) 1934 A.C. 176: 21 A.I.R. 1934 P.C. 60 : 148 I.C. 637 : 103 L.J.P.C. 41 : 150 L.T. 384,
7AIR 1937 PC 31 : 166 Ind. Cas. 516 : 1937-45-LW 146 and I.A. 40 : 24 A.I.R. 1937 P.C. 27 : I.L.R. (1937) Mad. 517 : 166 I.C. 513 (P.C)
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12(1943) L.R. 1943 P. 68 : 112 L.J.P. 84 : 168 L.T. 361 ; 1943-2 All E.R. 110
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15(37) I.L.R. (1937) Mad. 498 : 24 A.I.R. 1937 Mad. 217 : 167 I.C. 490 (F.B)

16(36) 15 Pat. 510 : 23 A.I.R. 1936 Pat. 513 : 164 I.C. 860