BOMBAY HIGH COURT

State of Bombay

Vs.

Gajanan Mahadev Badley

First Appeal No. 784 of 1952, in Suit No. 662 of 1950

(Chagla, C.J. and Dixit, J.)

08.10.1953

JUDGMENT

Chagla, C.J.

1. This appeal arises out of a suit filed by the plaintiff for a declaration that au order passed by the State of Bombay, which was the defendant, on 24-6-1949, reducing the plaintiff from the rank of an Inspector in the Rationing Department to a clerk, was illegal and void, that he still continues to hold, the office of an Inspector, and also for a decree for a certain amount for arrears of salary. The suit was heard by Mr. Hathi, the learned Judge, City Civil Court, and he gave tile declaration to the plaintiff which he sought and also passes a decree in his favour for arrears of salary. The State of Bombay has now come in appeal, and the first question that we have to consider is whether the order of 24-5-1949, which is challenged was a legal and valid order.

2. On 18-1-1949, the plaintiff, who was then an Inspector in the Rationing Office, was served with a notice by the Controller of Rationing, Bombay, and in this notice it was stated that on 20-11-1948, the plaintiff called at the A Ward Rationing Office and requested the Rationing Inspector, one Rajmane, to effect suitable alterations in the statement of one P.D. Fernandes in connection with the absentee withdrawal of ration on the individual ration cards held by P.D. Fernandes with a view to weaken the whole case. A copy of Rajmane's statement was attached and the plaintiff was given seven days' time to show cause why no action should be taken against him for exercising his official position to influence the case under reference, and also to state whether he desired to be heard in person. It will be clear from this that the plaintiff was being charged with having seen Rajmane on 20-11-1948, and to have asked him to make suitable alterations in some statement which Fernandes had made in respect of a case that was pending against him, and what the plaintiff wanted Rajmane to do was to try and weaken the case against Fernandes by making these suitable alterations. In the statement of Rajmane which was annexed to this notice, Rajmane says that the plaintiff asked him about the case of Fernandes. The plaintiff

asked Rajmane where the case stood, what statement was recorded, and if Rajmane could do something in that case. Rajmane says that he flatly refused to do so, but asked him to see some other officials. It is pertinent to note that in this statement Rajmane does not say that the plaintiff asked him to alter the statement of Fernandes with a view to weaken the whole case.

On 15-2-1949, the plaintiff sent a reply to this notice. He says that the allegations made by Rajmane were false, that he was introduced to Rajmane by another Inspector by the name of Shah, and that he wanted to know about the case against Fernandes out of curiosity, and he had made it clear to Rajmane that he did not wish to influence him to make any change in the statement made by Fernandes. He says that he was innocent and that he was prepared to appear in person if the foregoing lines failed to convince the Controller of Rationing about the honest intentions of the plaintiff. On 17-2-1949, the plaintiff was informed that he should appear before the Assistant Controller of Rationing on March 10 when a departmental inquiry would be held. A departmental inquiry was duly held and at that inquiry all that happened was that the officer who held the inquiry, one Mr. Velloz, put certain questions to the plaintiff and the plaintiff was asked to cross-examine Rajmane who was present and the plaintiff asked certain questions to Rajmane.

On 30-3-1949, the plaintiff was served with another notice, which is the material notice in this case, and he was asked to show cause within seven days from the receipt thereof why he should not be reverted to his original post of a clerk. It was stated in this notice that the charge leveled against him as per the memorandum dated 18-1-1949, had been established. Therefore, it is clear that by this notice he was merely asked to show cause against the punishment which was proposed to be meted out against him. With regard to the findings, the Controller informed the plaintiff that the findings had already been accepted and nothing more could be done with regard to that because the notice expressly stated that the charge had been established. The plaintiff replied on the same day, asked for some time, and also asked the Controller of Rationing to furnish him with the relevant documents. On that the Controller on 1-4-1949, furnished to the plaintiff the findings of Mr. Velloz. In these findings Mr. Velloz has come to the conclusion that it was clear that the plaintiff had approached Rajmane in order to influence him. Velloz also refers to the fact that in a particular case the accused was discharged because the plaintiff was absent and could not give evidence, and because of his conduct in remaining absent he had received a warning from the authorities; and Mr. Velloz says that taking both these points into consideration, viz., the attempt at influencing Rajmane and his previous conduct in respect of which he had been warned, he recommended that the plaintiff may be reverted to his original post of clerk. It may be pointed out that the plaintiff had joined the rationing department as a clerk on 1-1-1944, and was promoted as an Inspector on 22-1-1944. On 10-4-1949, the plaintiff sent a reply to this notice and it is perfectly true, as contended by the Advocate General, that in this reply the plaintiff has dealt with not only the question of the sentence which the authorities proposed to mete out, but also with regard to the merits of the findings, a copy of which had now been furnished to him. On 30-4-1949, the Controller of Rationing forwarded to the plaintiff a statement of Mr. Shah and a further statement of Rajmane. Mr. Shah's statement was taken down on 20-11-1948, and is not material because all that that statement says is that Mr. Shah introduced Rajmane and requestsed Rajmane to see what the plaintiff wanted. But the statement

of Rajmane, which bears the date 11-12-1948, is extremely material, and the statement is to the following effect;

> "In continuation of my statement dated 20-11-1948, I beg to state that Mr. Badley, Inspector ('who is the plaintiff) from 'C' Ward, asked me whether I can change the statement of the party or mild the case (which means, we take it, weaken the case). He did not tell me what way I should change. I refused to do either. When I reported this matter to my Dy. Chief Inspector Mr. Badley had left the office."

On 11-5-1949, the plaintiff replied to this letter of 80-4-1949 with its annextures and he makes a strong protest against the subsequent statement of Rajmane having been forwarded to him as late as 30-4-1949. He points out that it should have been either sent to him along with the letter of 18-1-1949, or it should have been made available to him during the actual conduct of the departmental inquiry held on 10-3-1949, or at least it should have been furnished to him along with the copy of the findings on 1-4-1949.

He therefore, says that he will be justified in surmising that the subsequent statement of Rajmane is definitely an after-thought and has been ingeniously made out with a view to substantiate the charge levelled against him. The Controller of Rationing ultimately passed an order on 24-6-1949, which is the order challenged in the suit, ordering that the plaintiff should be reverted to his original post of a clerk with effect from 25-6-1949.

3. Rule 55 of the Bombay Civil Services Conduct, Discipline and Appeal Rules provides how an order of dismissal, removal or reduction should be passed, and the question was canvassed in the Court below as to whether this rule had been complied with. The learned Judge took the view that the rule was merely directory and not mandatory and that the State of Bombay was not bound to comply with this rule, and if the rule had not been complied with, the plaintiff could not make a grievance of that fact. Mr. Vakharia who appears for the plaintiff wanted to argue before us that the learned judge was not right when he took the view that R. 55 had no binding effect. In our opinion, it is unnecessary to consider that question, and for the purpose of this appeal we will assume that R. 55 is merely directory in its character and is not binding upon the State of Bombay.

4. But what is undoubtedly binding upon the State of Bombay, and which position was never challenged by the State of Bombay in the Court below, is the statutory protection given to a Government servant by Section 240(3) of the Government of India Act, and that sub-section provides :

> "No such person (i.e., a member of a civil service under Crown or a person who holds any civil post under the Crown) 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."

Therefore, before the State can dismiss or even reduce a civil servant in rank, it is incumbent upon it to give the servant a reasonable opportunity of showing cause against the action the State proposed to take against him. It is well, settled law that it is not sufficient under this sub-section for the Government merely to inform the servant that it proposes to pass a particular punishment and to ask him to show cause against that punishment. The opportunity which the State has to furnish has to be a reasonable opportunity, and the Courts have held that a reasonable opportunity is only afforded to the servant when he can show cause not only against the punishment but also against the grounds on which the State proposes to punish him. Therefore, it is not sufficient that the State should call upon the servant to show cause against the quantum of punishment intended to be inflicted upon him; the State must also call upon the servant to show cause against the decision arrived at by a departmental inquiry if that decision constitutes the ground on which the Government proposes to take action against the servant.

5. The Privy Council in - '*High Commr. for India and Pakistan v. I.M. Lair*[1], quote with approval a passage from the judgment of the learned Chief Justice to the following effect (p. 126) :

> "In our judgment each case will have to turn on its own facts, but the real point of the subsection is in our judgment that the person who is to be dismissed or reduced must know that that punishment is proposed as the punishment for certain acts or omissions on his part and must be told the grounds on which it is proposed to take such action and must be given a reasonable opportunity of showing cause why such punishment should not be imposed."

It is perfectly true, as argued by the Advocate General, that it would depend upon the facts of each case whether a reasonable opportunity as contemplated by the Privy Council was or was not afforded to the dismissed servant. When an inquiry against a dismissed servant is, as it were, in two parts, where there is, first, a departmental inquiry and then a notice to show cause is served upon him by the authority which proposes to dismiss him, the Court has got to look at both parts of the inquiry in order to come to the conclusion whether a reasonable opportunity was afforded to the servant to show cause against the action proposed to be taken against him. It may not be necessary to duplicate what has already been done in the departmental inquiry. It may be said that if in fact the dismissed servant has been given a full and proper opportunity to show cause against the allegations made against him, then it may not be necessary again to require from him practically the same explanation. It may also be said that it may not be necessary in every case to issue a notice in terms calling upon the servant to show cause not only against the quantum of punishment but also against the grounds on which the proposed action is based. Even though, as in this case, the notice may be defective, if in fact the servant has been given the opportunity and has availed himself of the opportunity of showing cause against the grounds, then the mere fact that there is an irregularity about the notice may not lead to the Court holding that the Government servant did not have the opportunity required under Section 240(3). But we think that there can be no doubt that the Court must be satisfied on a review of all the facts of a particular case that the statutory obligation cast upon the State has been properly discharged by

the State and the statutory obligation is to afford reasonable opportunity to the dismissed servant.

6. The Advocate General has attempted to argue that it is necessary for the servant to make a grievance that he has been deprived of a certain opportunity and it is only if he makes such a grievance and that grievance has not been removed that it would be open to the dismissed servant to complain in Court that reasonable opportunity was not given to him. That seems to us not to be the true view of the law. If a Government servant comes to Court and complains that his dismissal was wrongful and that reasonable opportunity was not given to him as required by the statute, it is for the State then to satisfy the Court that in fact reasonable opportunity was given to him. The requirement of the Government of India Act that reasonable opportunity should be given to the Government servant does not depend upon the Government servant asking for it. It is a statutory protection that is afforded to the servant and a statutory obligation cast upon the State and the State has got to discharge that obligation irrespective of whether the protection is claimed or not claimed by the servant.

[1] AIR 1948 PC 121

If the Court holds that reasonable opportunity was not given, the order of dismissal must be set aside and the Court cannot be influenced by the consideration that the dismissed servant did not ask for a reasonable opportunity. It is also important to bear in mind, as pointed out by the Privy Council, that the findings given by the officer holding the departmental inquiry are at that stage merely tentative. It is only when the authority who has a right to dismiss the servant comes to a definite conclusion on the charges which have been preferred against the servant and the actual punishment to follow is provisionally determined that the stage arises when a reasonable opportunity should be given to the servant to show cause against the action proposed to be taken. It is only at that stage, as against the Privy Council points out, that the action is proposed within the meaning of Section 240(3) of the Government of India Act.

7. Now, it is in the light of this legal position that we have to consider the facts of this case, and the first rather startling fact which confronts us at the very threshold is that in the departmental inquiry held by Mr. Velloz, Rajmane, the only material witness in the case, was never examined. All that Mr. Velloz did was that he asked the plaintiff to cross-examine him. It is difficult to understand the efficacy of a cross-examination without there being an examination-in-chief. It is difficult to understand how the plaintiff can cross-examine Rajmane if he did not know what his evidence was and what he was deposing to. The Advocate General says that domestic tribunals are not governed by the rules of procedure and the rules of evidence which govern a Court of law. He may be right, but we sincerely Hope, that the State of Bombay which has always been very punctilious in these matters will not countenance a departmental inquiry in which action is proposed to be taken against a servant where only a witness is produced for being cross-examined by the servant without the servant being given an opportunity of hearing what evidence the witness is going to give. Even assuming that a statement of such a witness is furnished to the Government servant, it is a sound rule that Courts of law follow and which even domestic tribunals should follow that all evidence must be given in the presence of an accused person and

in the presence of a person against whom action is proposed to be taken. It is one thing to make a statement behind the back of a person; it is entirely a different thing to make a statement in front of the Court or a domestic tribunal and in the presence of a person against whom you are going to make serious charges. But the matter in this case is much more serious than mere failure to ask Rajmane to give his oral evidence before the plaintiff. Even the so called right to cross-examine that was conferred upon the plaintiff was a very illusory right, because on the day when the departmental inquiry was held he did not have before him the second statement which Rajmane had made. Therefore, he proceeded to cross-examine Rajmane on the basis of the first statement in complete ignorance that Rajmane had made a subsequent statement. That statement was before Mr. Velloz, but Mr. Velloz did not think fit to apprise the plaintiff of the existence of that statement. Even a casual look at the two statements is sufficient to satisfy any Court that the charge against the plaintiff could only be substantiated on the basis of the second statement and not the first. All that, the first statement says is that the plaintiff inquired from Rajmane where the case against Fernandes stood and what statement was recorded and whether Rajmane could do something in the case. Rajmane was not asked according to this statement that he should do anything positive; that he should alter the statement or weaken the case against Fernandes. It is only when we come to the second statement which is made about 20 days after the first statement that Rajmane alleges that the plaintiff told him to change the statement and to weaken the case.

8. Now, it is important to note that the charge against the plaintiff in respect of which the departmental inquiry was held and which was communicated to him on 18-1-1919, was on the basis of the second statement, because the plaintiff was charged with having requested Rajmane to effect suitable alterations in the statement of Fernandes with a view to weaken the case against him. The Advocate General has contended that the substance of the second statement of Rajmane is embodied in the charge itself and therefore the plaintiff was not prejudiced by not having been furnished with the second, statement. In our opinion that is not the correct or proper way of looking at the matter. In the charge it was not intimated to the plaintiff that Rajmane had made a second statement. As far as his knowledge went, Rajmane had made only one statement, and although the charge was much wider and more serious than the first statement made by Rajmane, he had a right to assume that he was being charged with a serious offence although Rajmane had not deposed to that particular offence. It is admitted both by Mr. Velloz and Mr. Kureshi, the Controller of Rationing, at the material date, that they had the second statement of Rajmane before them, and Mr. Velloz's finding was based upon that statement, and the ultimate decision arrived at by Mr. Kureshi was also based upon that statement. The Advocate General says that the second statement was ultimately sent to the plaintiff and therefore the plaintiff could have shown cause against that statement. Now, it is one thing to point out to the investigating authorities that a statement made by a particular witness is false or incorrect or malicious; it is entirely a different thing to cross-examine that witness in the presence of the investigating officer and to establish by cross-examination that the witness is not a witness of truth. It is clear on the record, therefore, that the plaintiff never had the opportunity of cross-examining Rajmane on the second statement to point out the discrepancies between the first statement and the second

statement and to obtain from Rajmane an explanation as to why when he made the first statement he did not state what he ultimately stated when he made the second statement.

9. To put the matter briefly, the decision against the plaintiff was arrived at on the evidence of the most material witness without an opportunity being given to the plaintiff to cross-examine that witness; or, in other words, the investigating authorities based their conclusion and their finding upon an 'ex parte' statement of the most material kind without that statement having been tested by cross-examination. It has also been pointed out by the learned Judge, and rightly, that although the finding of Mr. Velloz was based on two grounds, one being a statement made by the plaintiff to Rajmane and the other being the fact that he had been warned by the authorities in connection with the case in which he failed to appear as a witness, the second ground was not mentioned in the charge at all, and therefore when the plaintiff went to the departmental inquiry he was only prepared to meet the charge that he had made a particular statement to Rajmane. He was not prepared to meet the other charge that he had been warned by the authorities earlier in his service. The Advocate General says that this second charge was mentioned in the finding and therefore the plaintiff had an opportunity of showing cause and in fact he has shown cause. That is perfectly correct, but even so there is an element of prejudice caused to the plaintiff, because if he had been told when the departmental inquiry was held that the authorities were going to consider against him the fact that he had been warned, he might have given evidence himself or he might have called some evidence to explain as to why he could not appear in Court and how the accused in that case came to be discharged which led to his being warned. A rather curious fact was also pointed out by the learned Judge below that Mr. Velloz when he made his report to Mr. Kureshi mentioned a third ground why the plaintiff should be reduced in rank, and the third ground was that the plaintiff was short in stature and that stature was not befitting the high position of an Inspector of Rationing. It is true that Mr. Kureshi in his evidence states that he did not think that particular observation of Mr. Velloz constituted a part of the finding. He, therefore, deleted it and forwarded to the plaintiff the finding minus that particular remark. But as far as Mr. Velloz was concerned, that fact undoubtedly weighed with him in the recommendation he made with regard to the punishment that should be meted out to the plaintiff.

10. Taking all these circumstances into consideration we have come to the conclusion that on the facts of this case the plaintiff was not afforded that reasonable opportunity which he is entitled to show cause against the action proposed to be taken by the State of Bombay. In view of that it is clear that the decision of the learned Judge below was right that the order of dismissal was not valid and must be held to be bad.

11. The learned Judge has also awarded to the plaintiff arrears of pay, and the question that arises is whether the learned Judge was right in granting that relief. The Advocate General has relied on 'Lall's case,, for the contention that the position under the Government of India Act was that a servant of the Crown had no right to sue the Crown in tort; unless there was an obligation undertaken by the Crown by statute or by contract, a servant of the Crown could not sue it for

arrears of pay. The Privy Council took the view that payment of a salary was entirely a matter of the bounty of the Crown and there was no legal obligation upon the Crown to pay its servant, and in 'Lall's case,, the Privy Council expressly decided that the only right that a dismissed servant had was to a declaration that the order of dismissal was void and inoperative and that he continued to remain a servant of the Crown.

12. Mr. Vakharia who appears for the plaintiff argues that we should prefer an earlier decision of the Federal Court which has taken a contrary view, and that earlier decision of the Federal Court is in - *'Province of Punjab v. Tara Chand*[2]*',* It should be noted that the Privy Council decision in 'Lall's case,, is subsequent to the decision of the Federal Court in 'Tara Chand's case'. It is unfortunate that the attention of the Privy Council was not directed to 'Tara Chand's case, (B)' and we do not find any discussion of 'Tara Chand's case,, in the judgment of the Privy Council. 'Tara Chand's case,, followed the Federal Court's decision in 'Lall's case,, which was subsequently reversed by the Privy Council in - 'AIR 1948 PC 121'. What is urged by Mr. Vakharia is that it is open to us to prefer the judgment of the Federal Court to that of the Privy Council and he is prepared to satisfy us that on a review of the authorities and of the decisions in India the Federal Court was right in the view it took and not the Privy Council. The view of the Federal Court was that a dismissed servant is entitled to arrears of pay. In our opinion, it is not open to us to consider the relative merits of the judgment of the Federal Court and of the Privy Council. As we shall presently point out, we are bound by the decision of the Privy Council, we must give effect to it, and whatever our view may be about the correctness of the decision arrived at by the Privy Council, so long as that decision stands and so long as the

[2] AIR 1947 FC 23

Supreme Court has not laid down the law to the contrary, we cannot express any opinion contrary to that expressed by the Privy Council.

13. Mr. Vakharia relies on Section 212 of the Government of India Act which provides :

> "The law declared by the Federal Court and by any judgment of the Privy Council shall, so far as applicable, be recognized as binding on, and shall be followed by, all courts in British India, and, so far as respects the application and interpretation of this Act or any Order in Council thereunder or any matter with respect to which the Federal Legislature has power to make laws in relation to the State, in any Federated State."

The submission of Mr. Vakharia on the interpretation of this section is that the Government of India Act gives the same efficacy to a decision of the Federal Court as to a decision of the Privy Council, and therefore it leaves it to the option of a Court in British India whether to accept the decision of the Federal Court or of the Privy Council. In our opinion that contention is entirely untenable. What Section 212 really means is that the law declared by the Federal Court to the extent that the Federal Court is the ultimate authority, and the law declared by the Privy Council to the extent that the Privy Council is the ultimate authority, shall prevail. But we have got to

look to the other sections of the Government of India Act in order to decide which is the ultimate authority with regard to any particular case decided. For that purpose we must look at Sections 205 and 208. Section 205 conferred appellate jurisdiction upon the Federal Court in appeals from High Courts in matters which involved the interpretation of the Government of India Act or any Order in Council made thereunder, and Section 208 provided for an appeal from a decision of the Federal Court under Section 205 to His Majesty in Council, and an appeal was provided by leave of the Federal Court. Under clause (a) with which we are not concerned, an appeal was provided from a judgment of the Federal Court given in its exercise of its original jurisdiction. In 'Lall's case,, the Federal Court did not give any leave, but the appeal was entertained by special leave granted by the Privy Council.

Therefore, the final authority as far as the Government of India Act was concerned in constitutional matters was not the Federal Court, but if an appeal was entertained by the Privy Council, it was the Privy Council that was the ultimate authority. It was only when no leave was granted by the Federal Court and no special leave was granted by the Privy Council that the decision of the Federal Court became final and effect was given to it under Section 212. In this case, inasmuch as the Privy Council has laid down the law in 'Lall's case,, that law must prevail over the law laid down by the Federal Court in 'Tara Chand's case,, on an identical question. It is no use arguing that 'Tara Chand's case, was not appealed from and the Privy Council has not reversed 'Tara Chand's case, (B)'. The Federal Court took a particular view in 'Tara Chand's case,, that very point came up before the Privy Council, and the Privy Council took a contrary view, and therefore it is that contrary view which must prevail under Section 212 and not the view of the Federal Court.

14. Mr. Vakharia has relied on art. 374(2) of the Constitution. The article deals, as the marginal note correctly indicates with proceedings pending in the Federal Court, and what it provides is :

> "All suits, appeals and proceedings, civil or criminal, pending in the Federal Court at the commencement of this Constitution shall stand removed to the Supreme Court, and the Supreme Court shall have jurisdiction to hear and determine the same....."

The reason for providing this was that on the Constitution coming into force the Federal Court ceased to exist and the new Court, the Supreme Court, was set up, and some provisions had to be made with regard to matters pending before the Federal Court. But what Mr. Vakharia relies on is the next provision in that article and that is :

> "..... and the judgments and orders of the Federal Court delivered or made before the commencement of this Constitution shall have the same force and effect as if they had been delivered or made by the Supreme Court."

Mr. Vakharia says that by this provision all judgments of the Federal Court delivered before the Constitution have been given the same efficacy and the same binding authority as the judgments

of the Supreme Court delivered after the Constitution came into force. In our opinion it is impossible to give that interpretation to this provision in Article 374(2). Obviously, the judgments and orders of the Federal Court referred to in that part of the article are judgments and orders which were delivered by the Federal Court in those suits, appeals and proceedings which were transferred to the Supreme Court. The Federal Court may have passed interlocutory orders, it may have delivered judgments, in those matters, and in order to obviate any argument that these orders or these judgments ceased to have any validity by reason of the fact that the Federal Court ceased to exist and a new Court came into existence, the Constitution has expressly provided that the judgments and orders already delivered by the Federal Court in matters transferred to the Supreme Court shall have the same binding force as if they had been delivered or passed by the Supreme Court itself. In this connection attention may be drawn to Article 141 of the Constitution. That article provides :

> "The Law declared by the Supreme Court shall be binding on all courts within the territory of India."

After the Constitution has come into force, the only Court whose decisions are made binding on all Courts is the Supreme Court. But prior to the Constitution it would depend upon the Government of India Act as to the decisions of which Court shall have a binding effect upon the Courts, and there can be no doubt that, before the Constitution was enacted the Privy Council in India was the final judicial authority whose decisions were binding on all Courts. After the Constitution has been enacted, it is open to the Supreme Court to lay down the law contrary to the view expressed by the Privy Council prior to the enactment of the Constitution. In this very case with respect, it is open to the Supreme Court to say that it prefers the decision of the Federal Court in 'Tara Chand's case,, to the decision, of the Privy Council in 'Lall's case, (A)'. But till the Supreme Court has expressed that opinion, the decision of the Privy Council must continue to have binding authority upon all the High Courts in India. The same view of the law has been taken by the Allahabad High Court in - *'Om Prakash v. United Provinces*[3]*',*
3 AIR 1951 All 205

15. Mr. Vakharia has relied on a decision of the Patna High Court in - *'Abdul Majid v. Province of Bihar*[4]*',* In that case the learned Judges preferred to follow the decision in 'Tara Chand's case,, to that in 'Lall's case, (A)'. With respect to the learned Judges, they have not considered the provisions of the Government of India Act, nor have they expressed any opinion as to how it is open to a High Court not to follow the Privy Council in a matter which was decided before the Constitution came into force and in respect of which the Supreme Court has expressed no opinion after the Constitution was brought into operation. With respect, we do not think that the Patna High Court is right in the view that it has taken. We prefer the decision of the Allahabad High Court.

16. As far as our own High Court is concerned, in - *'Province of Bombay v. Madhukar Ganpat*[5]*',*

a division bench of this Court consisting of Mr. Justice Rajadhyaksha and Mr. Justice Vyas took the view that the only relief to which the plaintiff, who was a dismissed servant in that case, was entitled was a declaration as given by the Privy Council. Mr. Patel who appeared in that case wanted to rely on the judgment of the Federal Court in 'Lall's case, (A)'. The learned Judges refused to accede to that argument holding that that judgment had ceased to be operative by virtue of the superior Court's (the Privy Council's) appellate decision in the same case reported in 'Lall's case, (A)'.

17. The result, therefore, will be that the appeal will be allowed in part and the decree passed by the learned Judge will be modified by substituting the following decree :

> "There shall be a declaration that the order reducing the plaintiff from the rank of an Inspector to that of a clerk dated June 24, 1949, is illegal, void and of no legal effect. There will be a further declaration that the plaintiff continues to hold the office of Inspector from which he was reduced."

18. In view of our decision the cross-objections preferred by the appellant which were concerned with the salary due to him do not survive. Cross-objections dismissed with costs.

19. The plaintiff must get the costs both of the suit and of this appeal.
Appeal allowed in part.

[4] AIR 1950 Pat 17
[5] AIR 1952 Bom 37