OUDH HIGH COURT

Abdul Vakil

Vs

Secretary of State

(Thomas C.J. and Ghulam Hasan, J.)

23.02.1943

JUDGMENT

Thomas C.J.

1. This is a plaintiff's appeal arising out of the decree passed by the Additional Civil Judge of Unao dismissing his suit. Two particular reliefs were claimed in the plaint. The first relief asked for a decree for ₹ 24,220/- on account of the damages for wrongful dismissal and the other relief related to the plaintiff's re-instatement in the post held by him as a Sub-Inspector of Police. The suit was brought on 4th November 1940, and the defendants to the suit were the Secretary of State for India in Council and the United Provinces. The case of the plaintiff as gathered from the plaint and the oral pleadings was that he was appointed as a Sub-Inspector of Police by the Inspector General of Police as his nominee on 22nd November 1928, on a salary of Rupees 70 per mensem. He was transferred to Unao in May 1924. According to the plaintiff, trouble arose when Mr. T.B. Bhalla took over charge as Superintendent of Police, Unao, on 14th November 1981. The plaintiff was suspended by Mr. Bhalla on 12th December 1931, on the ground of absence from the head quarters not satisfactorily accounted for.. The order of suspension was set aside on appeal by the Deputy Inspector General of Police. This, it is stated, embittered the relations between the plaintiff and Mr. Bhalla, who thereafter became hostile to him. The plaintiff was on leave from January 1932 to 2nd April 1932. When the plaintiff returned from leave, he was again suspended by Mr. Bhalla on 7th April 1932, in view of adverse comments made in two judgments by Magistrates in cases investigated by him. The first of these judgments was given on 24th September 1931, acquitting one Ganga Charan, who had been run in under the Excise Act for being in possession of cocaine. The other is dated 23rd December 1931, cancelling proceedings under Section 110, Criminal P.C. against Lal Brahman. Both these cases were challaned by the plaintiff and ended in the acquittal of the accused. The Magistrate in the Excise case remarked that there was no trustworthy evidence of the recovered substance being sealed in the presence of witnesses and the packet of cocaine was dispatched to the Chemical Examiner without any opportunity having been afforded for the evidence of the security of the packet being brought on the file. The packet was not available for the inspection of the Magistrate, as it is not returned after the examination of its contents. The Magistrate also remarked that there was not sufficient justification for the Sub-Inspector to have searched the house of the accused. He held that the case was "anything but a straight forward work of the Sub-Inspector." In the second case

the accused had alleged that the proceedings were started against him because he refused not to appear as a witness against the Sub-Inspector in the case instituted against him by one Ram Dayal. The Magistrate remarked that:

> The Sub-Inspector ought to have halted and thought over the situation and asked a question to himself before challenging him whether there was sufficient evidence to warrant a conviction.

2. During the pendency of the case, the Magistrate went on saying, the Sub-Inspector had stated before him that he would not have challenged the accused, had it not been for the orders of the Superintendent of Police. In view of these adverse comments, Mr. Bhalla directed the Circle Inspector to investigate the ease against the Sub-Inspector. On the basis of the Circle Inspector's report, Mr. Bhalla drew up charges under Section 7, Police Act, and passed orders on 25th May 1932, stopping the promotion of the Sub-Inspector for three years. It was alleged that Mr. Bhalla paid no regard to the Notification No. v. 558-30 dated 29th September 1930, regarding the use of Judicial Records in Departmental Proceedings. This notification ran as follows:

> It has been observed that some Superintendents when conducting departmental proceedings do not summon witnesses but accept as evidence against an accused police officer statements and judgments recorded in cases to which he has not been party. This practice is contrary to the provisions of para. 460(b), Police Regulations, and it is apt to prejudice the case against an accused police officer.
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> The attention of all officers is drawn to the procedure prescribed in para. 460, Police Regulations, for the conducting of departmental trials of police officers. This procedure must be strictly followed even when the statements of witnesses at the departmental trial have already been recorded in Court. A judgment of a Court can be utilised as evidence in'departmental proceedings only to the extent permitted by para. 462, Police Regulations, i.e., only when it is the judgment in a case in which an accused officer has been tried judicially on the same facts on which he is being tried departmentally.

3. The order of Mr. Bhalla is alleged by the plaintiff to have been entirely illegal, as under para. 468, Police Regulations, it was the duty of Mr. Bhalla to submit a report to the District Magistrate, who alone had the jurisdiction to pass such order as he thought fit. Various other irregularities are pointed out in the procedure adopted by Mr. Bhalla, in particular, reference is made to the fact that Mr. Bhalla made use of the evidence recorded by the Magistrates in the criminal trials, the evidence recorded by the Circle Inspector behind his back and the report of the Circle Inspector and the two judgments. It is also alleged that Mr. Bhalla did not allow the Sub-Inspector to summon witnesses, nor did he summon documents which the Sub-Inspector had cited in his defence and of which a list was given. The plaintiff obtained his transfer in August 1932 to Moradabad. Before handing over charge he went to Mr. Bhalla and the latter told him not to appeal against his order otherwise he would get him dismissed from service. Inspite of this threat the plaintiff filed an appeal to the Deputy Inspector General of Police on 16th November 1932, through the Superintendent of Police, Moradabad. Mr. Bhalla made adverse remarks on this appeal when the papers were forwarded to him.

4. While this appeal was still pending, the Sub-Inspector received an order that he should proceed to Unao before the Disciplinary Board consisting of the Deputy Inspector General of Police and the District Magistrate of Unao, where he was going to be tried upon the same charges which had been tried by Mr. Bhalla. It may be mentioned that the notification establishing the setting up of the Disciplinary Board for the first time was issued on 17th August 1982. The Disciplinary Board dismissed the Sub-Inspector on 8th August 1938. He filed an appeal on 25th January 1934, before the Inspector General of Police, who dismissed it on 1st October 1934. The enquiry held by the Disciplinary Board was alleged by the Sub-Inspector to be illegal and in contravention of the Police Regulations. The procedure adopted by the Disciplinary Board was also challenged. The Disciplinary Board, it is alleged, admitted into evidence judgments and statements made in the two criminal trials and the findings of the Circle Inspector which were all inadmissible in evidence. There was no specific charge about the attempted extortion of any bribe by the Sub-Inspector in the Excise case, yet Ganga Charan and other witnesses were produced on the point, but the charge broke down.

5. The Sub-Inspector submitted a revision petition in February 1935, to the Local Government through the Inspector-General of Police, but this was withheld by him. The Sub-Inspector later submitted a petition for mercy to the Local Government but this was also withheld by the Inspector-General of Police. The Sub-Inspector alleges that when he absolutely failed to secure any redress from the Local Government and his case was not considered on the merits by the Government he gave a two months' notice oh 18th January 1940, to the Secretary of State for India in Council. The Sub-Inspector alleges that his dismissal was wrongful not only on account of the breaches of rules and regulations-referred to in the plaint-and the provisions of the Police Act but also on account of a breach of the statutory provision of law contained in the Government of India Act, 1919, which expressly lays down that in all cases it is the Local Government which is the final authority to examine and dispose of the case of a dismissed Government servant on the merits and also that no person may be dismissed by any authority subordinate to that by which he was appointed. The plaint states that the plaintiff's wrongful dismissal resulted in a loss of at least ₹ 24,220/-, as he has been deprived of 20 years' pay during which the plaintiff could further serve the Government. The plaint further alleges that the Sub-Inspector was not possessed of sufficient means to pay the court-fee and sought permission to sue as a pauper. Accordingly the Sub-Inspector sued in forma pauperis for the two reliefs mentioned above. He also asked for any other relief which the Court thought fit to grant.

6. Two separate written statements were filed on behalf of the Secretary of State for India and the United Provinces, but the defence put forward was identical. The plaintiff's claim was denied in toto. It was denied that there was any breach of law, rules or regulations in the enquiries held by the police officers or by the Disciplinary Board. It was further alleged that the Inspector-General of Police was perfectly entitled to withhold the revision and the mercy petition. It was urged that the plaintiff's suit was not maintainable against the Crown on the ground that a Government servant holds office at the pleasure of the Crown, and the failure to comply with rules and regulations in dismissing a Government servant cannot furnish a cause of action for damages against the Government. There was also a plea on behalf of the Secretary of State for India in Council that no suit lay against him. The suit was also alleged to be time-barred. In the oral pleadings the plaintiff's counsel stated his case thus: The plaintiff's dismissal is wrongful and in

contravention of the express provision of Section 96B, Government of India Act, 1919, for the following reasons: (1) That the order of dismissal emanated from the officers who were lower in rank than the Inspector General of Police who had appointed the plaintiff as Sub-Inspector. (2) That the plaintiff's revision and mercy petitions against the order of dismissal passed by the Disciplinary Board were not forwarded to the Local Government for consideration of the case on merits who is the final authority in the matter under Section 96. (3)-That the setting up of Disciplinary Board in appeal was illegal because the provisions for setting up of such board came into existence for the first time on 17th August 1932 and because the plaintiff had already been tried by the S.P. in accordance with the rules existing at the time of trial. The provisions regarding the setting up of Board did not apply to the plaintiff's case. (4) That the proceedings before the S.P. and Disciplinary Board stand vitiated by breaches of rules.

7. The two defendants were represented by the Government pleader and an advocate. It was admitted by the defendants' counsel that the suit lay against the U.P. Government but it did not lie against the Secretary of State for India in Council. On the question of limitation, it was admitted that Article 120, Limitation Act, applied. The plaintiff having been dismissed on 8th August 1938, the suit brought more than six years after that date was time-barred under that article. Lastly, it was stated that the plaintiff held office at the pleasure of the Crown and no suit for damages or for declaration was maintainable in the civil Court. The following issues were framed by the trial Court:

> (1) Whether the plaintiff's dismissal is in contravention of the express provisions of Section 96B, Government of India Act, as alleged? (2) Whether the provisions regarding the setting up of Disciplinary Board did not apply to the plaintiff's case? If so, whether the order passed by the Board is illegal and void? (3) Whether the plaintiff's trial before the S.P. and the Board stands vitiated by breaches made in following the standing rules? If so, its effect? (4) Is the present suit not maintainable against Secretary of State for India in Council? (5) Whether a proper notice was sent to the defendants 1(6) Whether the present suit is within time? (7) Can a civil suit lie against the order of dismissal passed by the officers of the Crown? (8) To what relief, if any, is the plaintiff entitled?

8. On issues 1 and 7 the trial Court held that the plaintiff's dismissal was not in contravention of the express provisions of Section 96B, Government of India Act, inasmuch as the Disciplinary Board which ordered the dismissal was not subordinate to the Inspector General of Police, who had appointed the plaintiff. It was also held that the plaintiff was not entitled to damages for dismissal as he was serving during His Majesty's pleasure and it was not open to the civil Courts to enquire whether the order of dismissal by the departmental authorities was wrongful. Under issue 2 the trial Court held that the setting of a Disciplinary Board was illegal and its proceedings prejudiced the plaintiff, but the learned Judge further held that it was outside the jurisdiction of the Court to declare that the order passed by the Board was void. Under issue 3 the trial Court summed up the finding thus:

> Thus, it is evident that the plaintiff did not get a hearing after the decision of the appeal by the I.G. against the order of the Disciplinary Board. It is quite possible that the result might have been different if the Local Government had examined all the facts, evidence

and circumstances and the irregularities made during the proceedings. I must say that the plaintiff did not get the fair and reasonable opportunity of clearing his position. The law as it stands does not afford the plaintiff a cause of action (to the plaintiff) in spite of the fact that injustice appears to have resulted to the plaintiff.

9. Under Issue 4 the plaintiff's counsel having conceded that since the enforcement of the Government of India Act, 1935, the suit did not lie against the Secretary of State for India in Council, the issue was found in the affirmative. Issue 5 was found in favour of the plaintiff. As regards issue 6, the trial Court stated that counsel for both parties had agreed that Article 120, Limitation Act, was applicable. The trial Court held that time did not begin to run earlier than the dismissal of the appeal by the Inspector-General of Police on 1st October 1934. The ordinary period of limitation expired on 1st October 1940, and adding to it two months required for serving the notice under Section 80 the suit was within time. The result was that the plaintiff's suit was dismissed against both the defendants. The first question that has been argued before us is that the plaintiff was dismissed by the Disciplinary Board, which was incompetent to pass the order of dismissal, the reason being that the plaintiff had been appointed by the Inspector General of Police and under Section 96B, Government of India Act, he could not be dismissed by an authority which was subordinate to the Inspector General of Police. It is argued that the order of dismissal passed by the Disciplinary Board is void and inoperative. There has been no dismissal in the eye of law and the plaintiff must be deemed to be still in Government service.
10. The second question that has been raised is that even if it be assumed that the Disciplinary Board had the power to dismiss the plaintiff, the order of the board was based on a flagrant breach of the rules governing enquiries and that the final act of dismissal by the Inspector General was wrongful as he had been deprived of the right to approach the Government. The last question that has been argued is the appropriate relief to which the plaintiff is entitled. It has been contended that if the first point prevails, then no question of a decree for damages as prayed in para. 12(1) of the plaint arises. The plaintiff would be entitled to a declaration that his dismissal was no dismissal in law in view of the provisions of Section 96B, Government of India Act and that he is still a member of the Police Force, and as he has been removed he should be re-instated to his post in the Police Force. It is further contended that a decree for salary for six years should be granted to the plaintiff. Before we deal with the main contention, it seems to us to be necessary to clear a point of fact, viz., whether the plaintiff was appointed by the Inspector General of Police as the learned Government Advocate has contended that he was appointed by the Deputy-Inspector General of Police. In para. 7 of the plaint the plaintiff, had relied on Section 96B, Government of India Act, 1919, although he did not specifically refer to that section. He, however, made it clear that his dismissal was wrongful because under the Government of India Act no person may be dismissed by any authority subordinate to that by which he was appointed. In para. 7 of the written statement of both the defendants no plea was raised that the plaintiff was appointed by the Deputy Inspector General of Police and was dismissed by him and consequently no question of the application of 8. 96B, Government of India Act, arose. The material part of the reply is that it is denied that the plaintiff has got any cause of action whatever or that he was not dismissed by the Local Government which is the final authority under the Government of India Act of 1919. The dismissal was not at all wrongful.

11. The plea of dismissal by the Local Government was an evasive plea. In oral pleadings the plaintiff's counsel definitely stated that his dismissal was in contravention of the express

provision of Section 96B, Government of India Act as the order of dismissal emanated from the officers who were lower in rank than the Inspector-General of Police, who had appointed the plaintiff as Sub-Inspector. The defendants' counsel who followed that statement did not controvert this allegation. He merely stated that the plaintiff held office at the pleasure of the Crown and that no suit for damages was maintainable in the civil Court. Under Order 8 Rule 5, Civil Procedure Code it is laid down that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability.

12. If the defendants had raised this point in the trial Court, that Court would no doubt have framed a specific issue of fact to that effect. That there was no serious dispute between the parties upon this question of fact appears to follow from the narrative given by the trial Court at the threshold of its judgment. The learned Additional Civil Judge begins by saying that "the admitted facts of the case are as follows" and he proceeds to say that the plaintiff was appointed as Sub-Inspector on 22nd November 1923, on a salary of ₹ 70/- p.m. by the Inspector-General of Police.

13. The plaintiff in his evidence on oath also stated that the Inspector-General of Police nominated him as Sub-Inspector in 1921, that he was under training in 1922 at the Police Training School at Moradabad and that he was appointed by the Inspector-General and posted to Kheri on 22nd November 1928 on a monthly salary of ₹ 70/-. This evidence was not challenged in cross-examination, nor was any evidence produced in rebuttal. Exhibit 12 is a letter dated 22nd October 1923, from the Inspector-General of Police purporting to be a notification for publication in the Police Gazette. The heading is "Appointment and posting of passed students of the 1922 Session of the Provincial Police Training School Moradabad" It gives the names of passed students who were appointed probationary Sub-Inspectors. The name of the plaintiff appears in the extract appended to this letter. It also shows that the plaintiff was the Inspector-General's nominee. There is no evidence on the record to show that the plaintiff was appointed by the Deputy Inspector General, nor have we been shown any rule which empowers the Deputy Inspector General to appoint Sub-Inspectors of the Police Force.

14. Paragraph 328 of the Police Regulations, 1912, says that appointments of Sub-Inspectors of the armed and mounted branches are made by the Deputy-Inspector General with the sanction of the Inspector General, and for the rules as to the appointment of the civil police reference is made to the provincial training school pamphlet. This pamphlet says that the Inspector-General is to intimate to each Commissioner the number of candidates required from the division for admission to the training school. The Commissioner calls a committee consisting of himself, the District Magistrate, the Superintendent of Police and the Deputy Inspector General of the Range. This committee selects the required number of candidates. The rolls of the selected candidates are sent to the Inspector General, who then directs that they should be admitted to the school. The Inspector, General has got a right to select candidates in addition to those selected by the Divisional Committees. The pamphlet further says that the Commissioner should call upon the District Magistrate of each District in the Division to submit a list of candidates nominated by him or by the Superintendent of Police for admission to the training school. The District Magistrate and the Superintendent of Police have the right to nominate candidates within their District. The Commissioner then prepares a divisional list of these nominations to which he is entitled to add any candidate resident in his division nominated by him or by a Deputy Inspector-

General. A Deputy Inspector-General after nominating a candidate must forward the nominating roll to the Commissioner. We do not think that these rules support the contention raised by the learned Government Advocate that the power to appoint Sub-Inspectors rests with the Deputy Inspector General. Reference is made by the learned Government Advocate to para. 449 of the Police Regulations, 1928. This paragraph shows that the Inspector General may punish inspectors and all police officers of lower ranks and the Range Deputy Inspector General may punish all officers of and below the ranks of, inspector temporarily or permanently subordinate to him. In the first place this paragraph does not show that the power to punish contemplated by it involves the power of dismissal as well. If it be held to include the power of dismissal as well, then the paragraph must be considered to be ultra vires, as it would be in conflict with the provisions of Section 96B, Government of India Act. Section 84, Government of India Act of 1915, as amended by the Act of 1919, clearly lays down that a law made by any authority in British India and repugnant to any provision of this or any other Act of Parliament shall, to the extent of that repugnancy, but not otherwise, be void.

15. Paragraph 449 of the Police Regulations, therefore does not help the defendants' case. Section 96B, Government of India Act of 1915, as amended by the Act of 1919, lays down:

> 96B. (1) Subject to the provisions of this Act and of rules made thereunder, every person in the civil service of the Crown in India holds office during His Majesty's pleasure, and may be employed in any manner required by a proper authority within the scope of his duty, but no person in that service may be dismissed by any authority subordinate to that by which he was appointed, and the Secretary of State in Council may (except so far as he may provide by rules to the contrary) reinstate any person in that service who has been dismissed.

16. Upon the strength of this section, it is contended that the dismissal of the plaintiff by the Disciplinary Board was clearly void and inoperative, as the plaintiff having been appointed by the Inspector. General could not be dismissed by the Disciplinary Board which was subordinate to him. It has been contended by the learned Government Advocate that the Disciplinary Board was an independent body, which was created by the Local Government with full powers to inflict any punishment including dismissal on officers of the subordinate police of the rank of Sergeant, Sub-Inspector or Inspector, and was in nowise subordinate to the Inspector-General. We do not agree with this contention. A reference to the constitution of the Disciplinary Board itself shows that an appeal was permitted to the Inspector-General of Police against an unanimous finding and order of punishment inflicted by the Disciplinary Board. This provision in our opinion concludes the matter. It cannot be contended that the Disciplinary Board was superior to the Inspector-General, nor can it be said that it possessed co-ordinate powers. An appeal was expressly provided to the Inspector-General against its decisions. It follows therefore that the position of the board must be that of a subordinate, authority. This being our view it cannot be denied that Section 96B applies with full force to the facts of the present case.

17. In *Suraj Narain Anand v. North-West Frontier Province*[1] the Federal Court had to deal with the appeal of a Sub-Inspector who had been appointed by the Inspector General of Police and had been dismissed by the Deputy Inspector-General of Police in the Frontier Province. The Sub-Inspector in that case was appointed when the Government of India Act, 1919, was in force but

was dismissed after the Government of India Act, 1935, had come into existence. He filed a suit for declaration that the order of dismissal was illegal and void and he ought to be regarded as still continuing in office. He also claimed arrears of pay and in the, alternative damages for wrongful dismissal. Their Lordships held that under Sub-section (2) of Section 240, Constitution Act, the dismissal must be held to be inoperative as one made by an officer who is prohibited by Statute from making it. They referred to the Privy Council decision in *Rangachari v. Secretary of State*[2], in which their Lordships of the Judicial Committee had held, with reference to the corresponding provisions of Section 96B, Government of India Act, 1919, that the dismissal of a civil servant by an authority subordinate in rank to the officer who made the appointment was by reason Of its origin bad and inoperative. The Federal Court granted a declaration that the order of dismissal passed against the Sub-Inspector was void and inoperative. They rejected the relief of damages for wrongful dismissal. As the case had been dismissed on the preliminary issue, the learned Judges said that they were not in a position to say What other questions remained to be tried before the nature of the reliefs to be awarded to the plaintiff could be finally determined. Accordingly they remitted the case with a declaration as aforesaid and with such further directions as the circumstances of the case might require in the light of the observations in the judgment.

18. In view of the decision of the Federal Court, learned Counsel for the appellant frankly concedes that he cannot press the case for damages. The learned Government Advocate contended on the authority in *Rangachari v. Secretary of State*, that no
declaration could be granted in the present ease. He also contended that the decision
in *Suraj Narain Anand v. North-West Frontier Province*[3] conflicted with the decision in *Rangachari v. Secretary of State* and also with the decision in *Nilamegham Pillai v. Secy. of State*[4] given by Sir Varadachariar as a Judge of the Madras High Court. He also referred to the decision in *Venkata Rao v. Secy. of State*[5], which was delivered by their Lordships of the Privy Council on the same date in *Rangachari v. Secretary of State AIR 1937 PC 27 : 166 Ind. Cas. 513 : 1937-45-LW 139(Supra).* We think there is a clear cut distinction between a case in which the dismissal is vitiated by a faulty procedure rendering the dismissal as wrongful and a case in which the dismissal itself is ultra vires on the ground that the dismissing authority had no power. *Venkata Rao v. Secy. of State*, fell within the first category while *Rangachari v. Secretary of State*, fell clearly within the second category. In *Rangachari v. Secretary of State*, the Sub-Inspector of Police was charged with improper conduct in the execution of his duties but this charge was dropped as a result of an official inquiry and Sub-Inspector who was ill was allowed by the responsible authority to retire on an invalid pension. After his pension had been paid for, three months, the matter was reopened and the Sub-Inspector was removed from service as from the date upon which he was invalid and the grant of his pension was put an end to. He sued for a declaration that he was not liable to be removed, subsequent to his retirement and for damages. It was held that the order was a nullity and could not be sustained and the stoppage of the pension was a breach of the rules relating to pension. Their Lordships also held in this case that the Sub-Inspector's dismissal having emanated from an officer lower in rank to the Inspector General who appointed him to the office, the dismissal was by reason of its origin bad and inoperative under Section 96B, Government of India Act. They refused to: grant a declaration in that case because in view of the Sub-Inspector's health he could not -be restored to his office. As regards the grant of pension, their Lordships refrained from granting a declaration on account of the statutory prohibition contained in the Pensions Act.

19. In *Venkata Rao v. Secy. of State*, the appellant, who was reader in the Government Press. Madras, and was dismissed from service, sued the Secretary of State for India in Council for damages for wrongful dismissal. The ground of the claim was that the proper procedure was not followed at the official enquiry which preceded his dismissal. Their Lordships held that the office was by express terms of Section 96B held during His Majesty's pleasure and no right of action as claimed by the appellant existed; and that the terms of Section 96B assure that the tenure of office, though at pleasure will not be subject to capricious or arbitrary action, but will be regulated by the rules, which are manifold in number, most minute in particularity and all capable of change, but there was no right in the appellant, enforceable by action, to hold his office in accordance with those rules, and he could therefore be dismissed notwithstanding the failure to observe the procedure prescribed by them. The case in *Nilamegham Pillai v. Secy. of State*[6] was also a case of wrongful dismissal. It was, therefore, rightly held that the dismissal did not furnish a cause of action for a civil suit. The case before us, however, is not a case of wrongful dismissal but a dismissal which was wholly ultra vires by the authority passing the order of dismissal. The following cases referred to by the learned Government Advocate in the course of his argument, viz., (1) *Krishnaji Nilkant v. Secy. of State* ('37) *Secy. of state v. Yadavgir Guru Dharmgir*[7] *Secy. of State v. Surendra Nath*[8], (4) *Shenton v. Smith*[9] and (5) *Dunn v. The Queen*[10] also fall under the first category and are inapplicable to the present case. The cases in *Kanhaiya Lal v. Secy. of State*[11], and *Province of Bengal v. Bhupendra Kumar*[12] appear to us to conflict with the latest view pronounced by the Federal Court in *Suraj Narain Anand v. North-West Frontier Province*[13] and we are therefore not prepared to follow them.

20. Learned Counsel for the appellant dealt at length with the procedure adopted by the Police authorities and the Disciplinary Board at the opening of his argument, to which the learned Government Advocate also gave a detailed reply. At the end of his argument, however, the appellant's counsel stated that the proceedings before the police officers at the various stages of the enquiry had merely a historical value in the narrative of events which led to his dismissal. He frankly stated that he was not in a position to argue that the Disciplinary Board acted in defiance of the statutory provisions of the law, as it was wholly unnecessary to do so because he was prepared to take his stand on the first point that the dismissal was ultra vires. In the view we take of the case, we have decided not to refer to these matters at length. We cannot, however, conclude this judgment without recording our considered view that the Inspector General of Police acted wrongly in thinking that he was entitled to withhold the revision and mercy petitions to the Looal-Government. Paragraphs 480 and 480A of the Police Regulations run as follows:

> 480. The power of revision may, in the case of all orders against which an appeal would lie under para. 477-1, be exercised suo motu by the authority to whom the appeal would lie or by any authority superior to that authority.
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> 480A. An officer whose appeal has been rejected by any authority subordinate to the Local Government is entitled to submit an application for revision to the authority next in rank above that by which his appeal has been rejected. On such an application the power of revision may be exercised only when, in consequence of some flagrant irregularity there appears to have been material injustice or miscarriage of justice.
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> The procedure prescribed for appeals applies also to applications for revision. An application for revision of an order rejecting an appeal must be accompanied by a copy of

the original as well as of the appellate order.

21. There was some correspondence between the Inspector General of Police and the Government on the subject. The Inspector General stressed the view that only one appeal lay to him and thereafter the unsuccessful appellant had only a right to submit a petition of mercy to the Government but he had no right to submit a petition in revision (vide letter dated 20th March 1936 Ex. 11). Mr. Framption, who was then Deputy Secretary to Government, reiterated the Government's view expressed before that there was no conflict between paras. 460 and 480A of the Police Regulations. He added, that the Police Regulations had been repeatedly examined with a view to
determining what amendments were desirable and that as a result of the examination
in 1985 it was decided that the right to apply in revision where there had been flagrant irregularity causing a miscarriage of justice must remain. In view of this admission and on general grounds he stated that it had been decided that para. 460 should be amended so as to remove any possible inconsistency with para. 480A rather than that para. 480A should be revised so as to exclude cases which fall under para. 460. He enclosed amended Clause 18 in para. 460 of the Police Regulations and requested the Inspector General to suggest an amendment to the draft which would otherwise be taken to be approved and published. The draft amendment was as follows:

> Nothing in Rule 17 shall affect the right of an officer whose appeal has been rejected to submit a petition for mercy to the Governor in Council or where his appeal has been rejected by the Inspector General, to submit an application in revision in accordance with para. 480A of these Regulations. As laid down in that paragraph, however, the power of revision may be exercised only when, in consequence of some flagrant irregularity, there appears to have been material injustice or miscarriage of justice.

22. It may be mentioned that no exception wa's taken to this draft. The original position taken up by' the Inspector-General was that the Sub Inspector was not entitled to apply for revision, as his orders were final but he could send a petition for mercy to the Government. When the Sub-Inspector submitted a petition for mercy in September 1988, he described the sorry plight to which he and his family had been reduced as a result of his dismissal from service and completely threw himself at the mercy of the Government assuring faithful performance of his duties in the event of his reinstatement. This petition for mercy was also withheld by the Inspector-General relying on para. 10(8) of Appendix 4 to the Police Regulations. The Sub-Inspector sent a copy of his mercy petition to the Government, who thereupon enquired from the Inspector General if he proposed to forward the petition to the Government but it was not sent. Paragraph 10(8) runs thus:

> 10. The head of a department to whom a petition is presented or forwarded may, at discretion withhold it when--
> (3) a previous petition from the petitioner on the same subject has been disposed of by the Local Government, and the petition, in the opinion of the head of the department, discloses no new facts or circumstances which afford grounds for a reconsideration of the subject.

23. This paragraph had obviously no application to the case and did not empower the Inspector-General to withhold the mercy petition. The question of limitation was raised by the learned Government Advocate before us on a different ground. As the question raised related to limitation, we did not think it right to bind the Government by any admission of the counsel in the trial Court and allowed the learned Government Advocate to argue the case upon the different ground. He contended that the counsel in the trial Court was wrong in agreeing that Article 120, Limitation Act, applied. He argued that Article 120 was a residuary article and could apply only in the absence of any article applicable to the ease. According to his contention Article 14 was the only relevant article. This article prescribes a period of one year "to set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for." Time in such a case begins to run from the date of the act or order. A reference to the plaint shows that there is no allegation therein that the plaintiff was asking to set aside any act or order of an officer of Government in his official capacity. It was, however, urged that the declaration which the plaintiff sought involved the setting aside of the order. It seems clear to us that the plaintiff's position was that his dismissal was no dismissal in law and he wanted a declaration to that effect. He did not seek to set aside any act or order of the Inspector-General, as according to him the order of the Disciplinary Board was a nullity and was beyond the jurisdiction of the Board. In support of this view, we may refer to *Patdaya v. Secretary of State*[14] In that case also, the plaintiff was suing not to set aside the Collector's order but on the relief for a declaration on the footing that the order was ultra vires and it was held that Article 14, Limitation Act, did not apply. The cases in *Malkarjun v. Narhari*[15] and *Gangu v. Maharaj Das*[16] referred to by the learned Government Advocate are distinguishable on the ground that the orders which were questioned in those cases were orders which were not ultra vires but were within the jurisdiction of the authorities passing those orders.

24. The learned Government Advocate further contended in the alternative that even if Article 120, Limitation Act, applied, the suit was beyond time as it was filed more than six years from 1st October 1934, the date of the dismissal of the appeal by the Inspector-General. This contention has no force. The plaintiff was entitled under Section 15(2), Limitation Act, to add to the ordinary period of six years under Article 120 the further period of two months prescribed for giving a notice. According to this calculation the suit will be within time up to 1st December 1940. The present suit having been filed on 4th November 1940, was therefore clearly within time. In this view, it is unnecessary to refer to the plaintiff's contention that the time did not begin to run until the proceedings finally terminated and the matter was disposed of by the Inspector-General refusing to forward the plaintiff's petition to the Government. Learned Counsel for the appellant in addition to asking for a relief for declaration has further asked us to grant his client a decree for salary at least at the minimum rate for six years. We think that once the declaration that the plaintiff still continues to be a member of the Police Force in the United Provinces is granted, it follows automatically that he is entitled to his salary for the period during which this salary was withheld from him. Section 2, Police Act (5 of 1861), says that the entire police establishment' under a Provincial Government shall, lor the purposes of this Act, be deemed to be one police force.

25. It further says that subject to the provisions of this Act the pay and all other conditions of service of members of the subordinate ranks of any police force shall be such as may be determined by the Provincial Government.

26. It is clear therefore that the Provincial Government is under a statutory obligation under Section 2, Police Act, to pay to the members of the Police Force in its employment such salary as has been determined by it. The plaintiff was dismissed more than six years before the date of the suit. The claim to recover the salary would fall under Article 120, Limitation Act, which prescribes a period of six years: vide
Secretary of State v. Guru Proshad Dhur[17] *Secretary of State v. Guru Proahad Dhur*[18] and *Secretary of State v. Lodna Colliery Co., Ltd*[19]. The cause of action would begin to run when the public authority refused to pay the salary. The fact that the Inspector-General refused to reinstate the plaintiff in his post and the further proceedings refusing to forward his revision petition and the mercy petition to the Government may well be regarded as refusal on the part of the Government to pay the salary to the plaintiff. Under Article 120, Limitation Act, he is not entitled to salary for a period longer than six years and his claim beyond six years must be taken to be time-barred., Although the plaintiff's salary during this period if he had continued in service must have varied, his learned Counsel has intimated to this Court that he would be satisfied if the plaintiff is given a decree at the minimum rate of ₹ 70/- per mensem for six years. Calculated at this rate the salary for six years amounts to ₹ 5,040/-. An argument was put forward that the plaintiff had asked for damages for wrongful dismissal and had not claimed any salary in the plaint. It was also urged that the notice sent to the Government did not specifically ask for arrears of the salary. In the notice the plaintiff stated that he would file the suit for damages and for any other relief which the plaintiff may deem fit against the Government. The plaintiff clearly asked that he should be reinstated in the post held by him as Police Sub-Inspector as the order of dismissal was a nullity. He further asked that any other relief which the Court deems proper may be granted to him. We are not prepared to hold that because of the omission to ask for a decree for salary in the plaint the Court is precluded from granting such relief to the plaintiff. Order 7, Rule 7, Civil Procedure Code says that every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for.

27. Having granted a declaration to the appellant and having expressed our view in no uncertain terms that the Government is under a statutory obligation to pay the salary of the members of the Police Force, we shall' be content to leave the matter in the hands of the Government to do justice to the appellant and pay him the minimum salary indicated above. The plaintiff's counsel in the trial Court had conceded that the suit did not lie against the Secretary of State for India in Council. He impleaded the Secretary of State for India in Council as, a pro forma respondent in the appeal. We do not think, however, that any relief can be granted against the Secretary of State for India in Council, and the suit against'him must stand dismissed. For the foregoing reasons, we allow this appeal against respondent 2 with costs of both the Courts, set aside the judgment and decree of the trial Court and grant the plaintiff a declaration that the order of dismissal passed against him was void and inoperative and that the plaintiff must therefore be regarded as still a member of the Police Force in the United Provinces. The suit against respondent 1 is dismissed. Under Order 83, Rule 10, Civil Procedure Code the plaintiff-appellant who succeeds in appeal is bound to pay the court-fee which would have been paid by him if he had not been permitted to sue as a pauper. The office will calculate such fee and the plaintiff-appellant is ordered hereby to pay the same. As, in our opinion, no substantial question of law as

to the interpretation of the Government of India Act, 1935, or, any Order-in-Council made thereunder is involved in this case, we are unable to grant;a certificate under Section 205, Government of India Act: vide Province of *Maqbool Husain v. Emperor*[20], and *Adul Qasim v. Emperor*[21]

Cases Referred.

[1] A.I.R. 1942 F.C. 3
[2] AIR 1937 PC 27: 166 Ind. Cas. 513: 1937-45-LW 139
[3] A.I.R. 1942 F.C. 3
[4] A.I.R. 1937 Mad. 777
[5] AIR 1937 PC 31 : 166 Ind. Cas. 516 : 1937-45-LW 146
[6] A.I.R. 1937 Mad. 777
[7] A.I.R. 1936 Bom. 19
[8] AIR 1938 Cal 759
[9] 1895 A.C. 229
[10] (1896) 1 Q.B. 116
[11] AIR 1937 Oudh 209 : 165 Ind. Cas. 834
[12] 71 C.L.J. 95
[13] A.I.R. 1942 F.C. 3
[14] A.I.R. 1924 Bom. 273
[15] (1900) 25 Bom. 337
[16] A.I.R. 1934 Lah. 384
[17] 20 Cal. 51
[18] A.I.R. 1937 Mad. 217
[19] A.I.R. 1936 Pat. 513
[20] AIR 1940 Oudh 382 : 1940 AWR (O.U.) 10 250
[21] A.I.R. 1943 Oudh 45.