
(1976) 09 BOM CK 0023
In the Bombay High Court
Case No : Spi. C.A. No. 4292 of 1976

Chandrabhan Ganpatrao Tale

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 30-09-1976

Acts Referred:

Constitution of India, 1950 — Article 16, 16(1), 226, 309, 311(2)

Criminal Procedure Code, 1973 (CrPC) — Section 235, 372, 389, 417, 418

Penal Code, 1860 (IPC) — Section 161

Citation : (1977) MhLj 278

Hon'ble Judges : M.D. Kambli, J; B.A. Masodkar, J

Bench : Division Bench

Advocate : A.S. Bobde and V.A. Bobde, for the Appellant; M.B. Mor, Asstt. Government Pleader for State, for the Respondent

Final Decision : Allowed

Judgement

B.A. Masodkar, J.—Few facts need be stated to eventually appreciate the controversy raised by this petition.

2. The petitioner Chandrabhan Tale is a civil servant, being a member of the police force and holding the rank of Head-constable with the State of Maharashtra. He was prosecuted for the offences u/s 161, Indian Penal Code and section 5 (1) (d) read with section 5 (2) of the Prevention of Corruption Act, 1947, in Special Case No. 3 of 1974, in the Court of Special Judge, Wardha. By the eventual judgment made on January 14, 1976, that Court found the petitioner culpable for the offences with which he was charged and accordingly he stood convicted for those offences. Further he was sentenced to under go rigorous imprisonment for six months for the offence u/s 161, Indian Penal Code and for one year and to pay a fine of Rs. 100 or to undergo in default R. 1, for two months for the offence u/s 5 (1)(d) read with section 5 (2) of the Prevention of Corruption Act. He preferred an appeal u/s 372 of the Code of Criminal Procedure, 1973 in this Court being Criminal Appeal No. 30 of 1976. The said

appeal was admitted by the learned single Judge on February 20, 1976. The petitioner was on bail during the trial and was allowed to remain on bail for enabling the petitioner to file the appeal and eventually this Court too while admitting the appeal granted him bail on the same terms as in the lower Court. Thus during the trial as well as after conviction and after admission of the appeal, the petitioner continues to be free under the, orders of bail and has not been sent to imprisonment.

3. It appears that by an order of May 31, 1974, produced at Annexure-A with the petition, the petitioner was put under suspension. By that order the Superintendent of Police, Wardha, the competent authority empowered by rule 151 of Bombay Civil Services Rules, 1959, directed entitlement of the petitioner to the normal allowance during the period he remains under suspension. After the conviction of the petitioner on January 14, 1976, in supersession of the order produced at Annexure-A, the competent authority made another order of date January 22, 1976, produced at Annexure-B, directing that the petitioner during the period of the appeal and from the date of conviction will be entitled to nominal subsistence allowance at rupee one per month. Having received this order the petitioner moved an application before the learned single Judge of this Court in the said Criminal Appeal No. 30 of 1976 purporting to invoke the inherent jurisdiction of this Court u/s 482 of the Code Of Criminal Procedure and further praying that to avoid injustice even the sentence imposed on the petitioner be suspended by recourse to the power of this Court u/s 389 of that Code. By that application the petitioner further questioned the order produced at Annexure-B, mainly on two grounds-firstly, that the petitioner being on bail was not a person who would be covered by the proviso under which the competent authority purported to act and, secondly, if the proviso were to apply in this manner, the proviso itself is ultra vires of the equal treatment clause enshrined in Article 16 of the Constitution of India. The learned single Judge before whom the matter, came for hearing in Criminal, Application No. 146 of 1976 thought that an important question is raised and therefore made an order directing that the matter be placed before the Division Bench of this Court. He also issued notice to the Advocate General as. the vires of the proviso in question contained in rule 151 were challenged. After the notice was so served and at the time of hearing, further application was made to this Court to treat this application as having been filed not only u/s 482 of the Code of Criminal Procedure but also under Article 226 of the Constitution of India. For the State and the Advocate General this prayer to treat the application under Article 226 of the Constitution was not opposed. Eventually the application has been registered as Special Civil Application concerning criminal matters filed in this Court.

4. Upon the facts stated above and the submissions advanced on behalf of the parties, a neat, nice and yet a knotty question regarding the true and correct interpretation of the second proviso below sub-clause (b) of clause (ii) of sub-rule (1) of rule 151 of the Bombay Civil Services Rules. 1959 (hereinafter referred to as Bombay. Civil Services Rules), arises for our decision. Answer to

that would eventually depend mainly upon gathering of its intention.

5. We may at this stage indicate, briefly, though there had been considerable arguments on both sides, as to what are the submissions for and against with regard to this proviso.

6. It is contended for the petitioner by the learned counsel Mr. Bobde that this proviso has to be read to permit reduction from nominal to normal rate of rupee one of the subsistence allowance payable to a suspended employee. Its terms should be so interpreted that will cover an employee who is firstly convicted and thereafter is actually lodged in imprisonment. For to no other employee only because he is suspended it can be the intention of the rule to pay a nominal amount of subsistence. The Very object of payment of subsistence allowance is not, according to the learned submission, to subject the civil servant any penalty. It is a matter of provision for the sustenance of the employee and presumably his dependants during the period he is being dealt with departmentally, which may result in his removal or dismissal or Subjecting him to any other lesser penalty. The true rule, according to the learned counsel, is that we must give meaning to the words used by the rule not in the literal sense of the words but in the sense as are meant to be conveyed to the civil servants who are the subject of treatment and benefit advanced by the rules. The Court should find the intent and purpose and not mere grammar and if there be two interpretations, one resulting in a beneficial treatment and another leading to draconian results, the first should be preferred. If the literal interpretation is given, the learned counsel Submits, then the words in the proviso "convicted by a competent, Court and sentenced to imprisonment" are capable of leading to a mischief of unequal treatment of similarly situate government servants, for, though there may be persons who are subjected upon conviction to a sentence like death or to fine or to forfeiture of property, they would not be governed by the proviso, though departmental action under the rules would equally be possible against them leading to their removal; dismissal and/or reinstatement after revocation, of suspension. There cannot possibly be any reasonable nexus so as to carve out a class of employees convicted by the competent Court and sentenced to imprisonment to be subjected to such a treatment. Further the submission is that though the rule purports to provide for sustenance or the maintenance of the employee during the period of suspension, the provision at a nominal rate of rupee one is by itself an illusory one and is totally unreasonable. It cannot by any stretch of imagination or by any standard of logic or reason; the submission is be that grant of rupee 1 be called subsistence or sustenance allowance; for, that can never sustain any one for a month particularly when rules do not permit but prohibit enjoyment in any other avocation while civil servant is Hinder suspension. Thus the object of providing the sustenance can be demonstrably defeated by such a provision. That would make the proviso a mere piece of colourable exercise of power and nothing else. It is emphasized that during he period the employee is under suspension, he has to lodge himself in a given place, to be determined by the competent authority and further that he will not

be entitled to take any other business or avocation. If therefore these be the pre-conditions governing the period of suspension, it is submitted, prescribing of a nominal sum of rupee one per month for sustenance only, because he is likely to be departmentally dealt with, by no means could be said to be a prescription of subsistence allowance which, according to the submission, includes reasonable means for maintenance of one self and one's dependants. If so tested, the argument firstly is, the proviso should be struck down as violative of Article 16 of the Constitution involving invidious discriminatory treatment as far as particular civil servants are concerned having no nexus whatsoever to the object for which the rule is framed. Secondly, it is submitted, the rule itself by providing the quantum of rupee one is illusory and unreasonable. Certain decisions were relied upon to which we will make a reference in the course of the judgment.

7. As against these submissions, for the State and for the Advocate General, Mr. Mor urged that there is a clear class of employees contemplated by the proviso and the words of the proviso should be interpreted to mean those persons who have been convicted for an offence by a competent Court and have been judicially sentenced to imprisonment irrespective of the fact whether such servant is lodged in jail or not. The rule of literal interpretation, according to the learned counsel, is the only salutary rule that should be preferred in this matter. As to the complaint that there is any discriminatory treatment contemplated by the rule with regard to certain class of employees, it is submitted that by interpretation such classification cannot be reached. It is a matter of policy of the State upon which the rule operates, in that those employees, who have been convicted upon trial by competent Court and against whom Court has chosen to impose the penalty of imprisonment though there were other choices of penalty, should be dealt with in a particular manner while the proceedings in departmental matters are either postponed because of filing of appeal or because of any other cause. Proviso operates on a given state of affairs and it has clear purpose firstly to await the decision of the appeal so that the interests of the convicted employee are not affected or jeopardised and secondly only those who are subjected by the Court to the sentence of imprisonment are subjected to draw a nominal sum of rupee one. What should be the subsistence allowance is a matter to be determined by competent authority having power to frame rules under Article 309 of the Constitution. That cannot be subjected to judicial review by raising questions of policy or questions of such reasonableness in that regard. It is said that rupee one is provided to keep up the link between the State and the civil servant during the period the appeal is being heard as the person is to be eventually dealt with department ally. Thus the submission is that once there is a person convicted by competent Court and there is a judgment of sentencing him to imprisonment, his entitlement under the proviso would be to receive rupee one nominally from the State as subsistence allowance, unless he is finally acquitted by the appellate Court. Reference was made to the provisions of the Code of Criminal Procedure dealing with suspension, remission, commutation of sentences as well provisions enabling pardons, to submit in what particular cases

the person would be only entitled to nominal sum of one rupee. Indeed it is contended that though executive government may purport to remit or commute the sentence, if the judicial sentence had been that of imprisonment the entitlement of such a person until he is dealt with departmentally would be rupee one and nothing more. Questions whether he could be sustained by that sum or his dependants could be maintained, are all questions irrelevant. The submission is that the employee accepts the rule when he enters the civil service. The proviso is a part of the rule and the liability indicated thereby is a part of the contract between the State and civil servant. It cannot be struck down on the supposed grounds of discrimination or unreasonableness. Thus the person who moves an appeal and obtains an order of bail by his unilateral act from the appellate Court so as to remain free, is still sentenced to imprisonment upon conviction by competent Court and would not be entitled to more than one rupee as indicated by the proviso.

8. As a matter of law and upon the facts and rules applicable to the petitioner, Mr. Mor the learned counsel appearing for the State and for the Advocate General, did not raise any debate because of the decision of the Supreme Court in *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, , that even under the Bombay Civil Services, Conduct, Discipline and Appeal Rules, (hereinafter referred to as Conduct and Discipline Rules), the conviction of the petitioner would not automatically result in his dismissal or removal and he submitted further that he would have to be departmentally dealt with as far as the matter of punishment is concerned though enquiry into the conduct leading to conviction of the petitioner is ruled out. Thus for the State before us it is conceded that mere conviction of the civil servant by Court does not affect his status as a State servant and further to put an end to that status there is necessity to deal with the petitioner departmentally in the manner indicated by rule 49 read with rule 55-A of the Conduct and Discipline Rules as may be applicable. For all purposes, therefore, petitioner and his grievance has to be understood as that of a civil servant who can be dealt with departmentally either subjecting him to the penalty of dismissal, removal or any other penalty which may lead to his reinstatement.

9. Now from the summary of the submissions to which we have made reference, it would be obvious that the primary question raised is of interpretation of the proviso and if the petitioner succeeds upon that interpretation to relief no other question need be decided.

10. Before we extract the proviso out of the body of rule 151, it is useful to take into account the purpose and context of rule 151 of which it is a part. These Rules, viz. Bombay Civil Service Rules, are framed by the Governor of the State by recourse to his power under Article 309 of the Constitution. The Rules regulate the conditions of employment of the persons serving in connection with the affairs of the State and deal with matters with regard to their employment, pay, allowances, leave and other matters. Chapter VIII with which we are

concerned of these Rules deal with dismissal, removal and suspension. Rule 150 declares the disentitlement of the Government servant to any pay or allowance once he is dismissed or removed from the service from the date of such dismissal or removal. Rule 151 deals with entitlement to pay and allowances which are called "payments" to the Government servant while put under suspension. Rule 152, as amended upto 1973, is enabling in nature and deals with the entitlement upon orders of reinstatement of the Government servant who had been dismissed, removed or suspended. Rule 153 declares that no leave would be granted during the period of suspension. Rule 154 deals with the matters of special sanction because of extra expenditure on account of pay and allowances upon reinstatement of civil servants. Rule 155 is no more on the statute book and appears to be relegated to the decision of a note appended to rule 152. Rule 156 creates a fictional state of suspension once the Government servant is put under arrest and the consequences thereof with regard to his pay and allowances. The other three rules, i.e. rule 157 deals with subsistence grant required to be adjusted from final payment under rule 152, rule 158 with regard to vacant post required to be filled in substantively after one year and rule 159 regarding the acting arrangements during the period of Government servant's suspension, removal, dismissal or reduction. Thus Chapter VIII principally deals with the matters regarding the pay and allowances of Government servants in the stated categories particularly while such servants are subjected to dismissal or removal or state of suspension. It is obvious that these are all matters of fiscal entitlement or disentitlement of civil servants as against public revenue. None of the provisions of the Chapter contemplate of taking of any penal action or procedure therefore but lay down how the matters of pay and allowances of a Government servant under stated contingencies be regulated. Without anything more, the intent is to provide for the Government servant permitting him to draw during the normal course of his service the pay and allowances appended to his post. That entitlement would cease upon dismissal or removal as a result thereof. Other rules deal with entitlement to such pay and allowances during the tenure when the civil servant can be subjected to reduced packet of emoluments.

11. We have taken this brief review of Chapter VIII firstly to indicate that rule 151 upon which the debate before us is raised is principally a rule that enacts entitlement of pay and allowances of a Government servant put under suspension. The suspension of the Government servant is not the subject-matter of rule 151 itself. His economic entitlement as against the State upon suspension or as the result thereof is the only subject-matter of that rule. Probing further into the structure of this rule, its obvious purpose is to lay down the quantum of pay and allowances of a Government servant after he has been suspended by the competent authority. This is worked out in a stated manner and generally is termed as "normal rate" of such allowance. If it is a case of a Military Officer, clause (i) of sub-rule (1) of rule 151 takes care of him, while with regard to other Government servants, clause (ii) of that sub-rule (1) states the minima and maxima payable while and during the period of suspension. This payment to

which the Government servant is declared as entitled is called a "subsistence allowance" and has a range minimum being one-fourth and maximum being three fourth, as contemplated by clause (a) of sub-clause (ii) of rule 151 (i). The ratio of the subsistence allowance is worked out by linking it to amount equal to leave salary which the Government servant would have drawn if he had been on leave of half average pay or half pay and in addition dearness allowance based on such leave salary. This basic subsistence allowance may be increased not exceeding 50% during the period of first 12 months as indicated by sub-clauses (i) and (ii) of clause (a) and clause (b) deals with compensatory allowance. Thus clauses (a) and (b) deal with the subsistence allowances and compensatory allowances respectively and below clause (b) the proviso, i.e. the second proviso, with which we are concerned has been appended. It is significant to observe at the outset therefore that herein is implicit enactment of purpose to provide a reasonable moiety to a State servant while suspended. Use of the words like "subsistence allowance" and its linking up to possible payment had Government servant enjoyed leave indicates clear purpose underlying so as to provide rationally for the maintenance of the servant kept out of work though obviously for a period of shorter duration.

12. Further before we extract that proviso, it may be seen that clause (c) of rule 151 similarly deals with the Government servants retained in service beyond the date of compulsory retirement and his entitlement during suspension. Sub-rule (2) enables the authority suspending the Government servant to withhold certain payments of the dearness allowance and/or compensatory allowance for the appropriation of the same against certain dues payable to Government. Clause (b) of sub-rule (2) includes what could be the deductions from the subsistence allowance proper. Instructions appended to the rule state that under clause (1) no payment would be made unless there is a certification by the Government servant with regard to his not accepting any private employment or engaging himself in any trade or business concerned and its eventual verification.

13. It is important to emphasize that sub-rule (2) of rule 151 which permits withholding of payments under sub-rule (1) is in two parts. As far as clause (a) is concerned, the competent authority is enabled to withhold the payment of dearness allowance or compensatory allowance but not the payment of subsistence allowance. Subsistence allowance can only be subjected to deduction as provided for by clause (b). This too is indicative of the policy underlying these provisions being that the civil servant governed by these rules while under suspension would continue to get bare minimum as quantified for his subsistence and need; and the same is not to be denied to him.

14. Taking all these clauses together, the object and purpose of the rule itself is to make provision for the subsistence payable to the Government servants. Subsistence so worked out is the part of the "pay and allowance" itself and is in the nature of interim payment. If no case exists to subject the civil servant to penalty and he is eventually restored to his status and work this becomes the

part of his usual "pay and allowance", while if eventually his termination is brought about as measure of penalty, his entitlement to usual pay and allowance is lost, though during the period he had been paid unrecoverable amounts for "subsistence". On one hand the payment thus has an objective to reasonably make provision to assure maintenance to Government servant and on the other it reduces the liability of the State to pay entire amount of usual pay and allowance which would have been otherwise payable. These are rationally conceivable objects while rules lay down reasonable quantum of amount payable to a State-servant under suspension. The basis of leave on half average pay or half pay in addition payment of dearness allowance based on such leave salary are matters providing points for calculation. It is implied here that while under suspension civil servant is not entitled to do duty attached to his post. By virtue of these provisions, nonetheless, he is entitled to allowance. But for these rules, he would have been entitled to his usual pay and allowances attached to his post. It is reasonable from all this to infer that provisions of rule 151 are not to be understood by themselves as leading to penal results but should be approached as made to give reasonable relief having regard to fair and just treatment. Language herein communicates unmistakably the maker's intention. The terms employed in the rule by use of words like "subsistence" conceptually having correlation to maintenance of persons and "allowance" that connotes nothing but the payment of a limited portion of pay being permitted to be paid in consideration of special circumstances all offer position premises for proper understanding of the proviso in issue.

15. The suspension of a Government servant, moreover, is a matter of serious consequence to him in that he is not entitled during the period of suspension to claim work attached to his civil post nor he may be allowed to take any other avocation to earn means of livelihood. Rule 49 of Conduct and Discipline Rules prescribes suspension as one of the penalties that can be imposed for good and sufficient reason upon a civil servant. Immediate result of such penalty under rule 49 would be to disentitle the civil servant during the period of suspension to do the duty attached to his post. Because of rule 151 he would be subjected thereafter to loss of his usual pay and allowance but would be entitled to get "a subsistence allowance" and other compensatory allowances.

16. Similarly under the scheme of the Conduct and Discipline Rules, it is obvious that pending enquiry into the conduct of a civil servant, the competent authority is equally entitled to bring about suspension of a civil servant. Such interim suspension is not a penalty by itself. It is temporary cessation of work or of duty attached to the post so as to enable the authority to effectively deal with civil servant as indicated by the Conduct and Discipline Rules. In this case too terms of rule 151 would eventually govern the entitlement of such person so far as his pay and allowances are concerned during the period of suspension. This would also apply to cases where criminal proceedings are initiated against such a servant and he is suspended, for, eventually upon the result of these proceedings or upon the facts resulting in conviction the civil service is capable of being

lawfully determined. While approaching eventually the matters enacted by rule 151 all these possibilities will have to be kept in view.

17. That there could be these types of suspension in the case of civil servants is well settled. More or less similar scheme of rules 151 and 152 of the Bombay Civil Services Rules applicable to the State of Bombay was examined by the Supreme Court in the case of *Baldeorai Patil v. State of Maharashtra* AIR 1963 SC 800 and it has been found that all kinds of suspensions whether as a penalty or as an interim measure pending departmental enquiry or pending criminal Court proceedings are within the considerations of those rules. In the matter of payment of subsistence allowance and consequential orders to be made with regard to entitlement of the civil servant with regard to such allowance or his salary the Supreme Court in *M. Gopala Krishna Naidu Vs. State of Madhya Pradesh*, ruled that the rules contemplate the executive to act in accordance with basic concept of justice and fairplay and the competent authority is bound to apply those principles while deciding matters under rule 152. Similarly in the case of *Ghanshyam Das Shrivastava Vs. State of Madhya Pradesh*, 3, non-payment of subsistence allowance leading to the civil servant's failure to attend the enquiry because of the paucity of funds was held to be depriving such civil servant to a reasonable opportunity of defending himself within the meaning of Article 311 (2) of the Constitution.

18. It is thus clear to us that the case of a civil servant laying a claim to subsistence allowance during the period of suspension under relevant rule has to be approached and met in the spirit of justice and fairplay and not with a view to penalise or subject him to untold and unintended hardship. Interpretation of the rule that would subserve this end as well achieve such just object to treat the suspended civil servant with equanimity in our view should be primary and first in consideration. The very concept contained under the cupola of the term "subsistence allowance" by its nomenclature as observed above is full of significance as laying down need of bare minimum which can reasonably be provided for a civil servant who is kept without work and who is therefore not entitled to full wages or other earnings.

19. No doubt, as an interpreting Court, we are called upon firstly to find the plain meaning of the words used by the rule and if there be no other interpretation possible and there being no ambiguity about it to apply the same irrespective of its consequences. However, there is equally sound rule that task of interpretation is not mere exercise of any mechanical jurisdiction. Courts are entitled to probe and find the intention of the instrument like statute law or rule and its purpose and give meaning to words to further the same so as to suppress mischief and further just and fair results. [See *Dilip Kumar Sharma and Others Vs. State of Madhya Pradesh*, , *Controller of Estate Duty, Gujarat Vs. Kantilal Trikamlal*, and *Jamnabai v. Suryabhan* 1974 Mh. LJ 183 and the cases and principles discussed therein.]

20. Now we propose to extract the second proviso as is placed under sub-clause

(b) of clause (ii) of sub-rule (1) of rule 151 of Bombay Civil Services Rules which reads as follows:

"Provided also that when a Government servant is convicted by a competent Court and sentenced to imprisonment the subsistence allowance shall be reduced to a nominal amount of Re. 1 per month with effect from the date of such conviction and he shall continue to draw the same till the date of his removal or dismissal or reinstatement by the competent authority, unless he was acquitted by the appellate Court in the meanwhile, in which case he will draw the subsistence allowance at the normal rate, from the date of acquittal by the appellate Court.

(Italics ours).

Bare reading of the proviso would indicate that it is an additional exception as it direct departure from "the normal rate" of subsistence allowance and upon satisfaction of its conditions reduces that rate "to a nominal amount of one rupee per month". This in term is the reduction of the amount contemplated by subclause (a) of clause (ii) of sub-rule (1) of rule 151 and is really a proviso to that clause, for, it does not appear that there is any reduction as far as the other compensatory allowances are concerned. This entitlement is effective and operative from the date of the conviction of a Government servant till the date of his removal or dismissal reinstatement by the competent authority. The entitlement to get the subsistence allowance at the normal rate further will be restored if before removal, dismissal or reinstatement the Government servant is acquitted by the appellate Court. By its very nature the proviso being an exception, its terms will have to receive a strict connotation and before it is applied all the conditions contemplated by the proviso will have to be fully satisfied or answered. To apply the proviso, therefore, plainly two requirements are essential. Firstly the Government servant must be convicted by a competent Court and secondly he be sentenced to imprisonment. If both these conditions are satisfied, the subsistence allowance of the Government servant is reduced by force of this proviso to a nominal amount of rupee one from the date of conviction and the Government servant will be entitled to that amount during the period until he is acquitted or he ceases to be the Government servant by virtue of his removal or dismissal or until his suspension comes to an end because he is reinstated. Emphasis herein clearly is on the fact of conviction and eventual acquittal in appeal and not on the particular sentence upon conviction. The latter part of the proviso restoring the normal rate of allowance is general in terras and only speaks of acquittal. Purpose underlying clearly is that the Government servant who can be dealt with effectively under the provisions of the Conduct and Discipline Rules because of conviction by the competent Court should be available in the state of suspension for eventual imposition of penalty of removal or dismissal or any other penalty under which his suspension can be revoked. However, for the purpose of reducing the subsistence allowance to nominal rate from that of the normal rate, the second condition is equally important and must

be satisfied. That condition is that such Government servant should be "sentenced to imprisonment."

21. Question is, what meaning should be attributed to this phrase "sentenced to imprisonment" keeping in view the context, the object and the purpose of rule 151 and particularly of this proviso? It is contended for the State, as we have indicated above, the words "sentenced to imprisonment" means "adjudged to a penalty of imprisonment", while it is contended for the petitioner that "sentenced to imprisonment" means and should mean "subjected to imprisonment" because of conviction. The word "sentenced" used with the preposition "to" tends according to this submission to indicate the state of the Government servant as lodged in jail.

22. Undoubtedly, the process of conviction having reference to a competent Court indicates adjudication about the culpability of the accused by the Court having jurisdiction. Upon conviction the Court according to law is entitled to pass orders as to punishment and such orders do appropriately answer the technical term called "the sentence." Prima facie, therefore, it does appear that the phrase "convicted by a competent Court and sentenced to imprisonment" is possibly indicative of a composite judicial process which is reached at the end of a criminal trial, in that the Court having jurisdiction records a conviction and imposes a penalty of imprisonment. In this approach the words "convicted" and "sentenced" qualifying the term "Government servant" would be read as descriptive in character and if read together would mean a Government servant held guilty and punished and nothing more. By that the phrase "convicted by a competent Court and sentenced to imprisonment" would indicate one and the same judicial adjudication having no different intentions intended by the term "sentenced to imprisonment." Such a simplification likely to reach unintended results and we feel that the whole process will have to be examined rather closely.

23. The import of the word "sentenced to imprisonment" can be best judged in the context and purpose for which possibly the proviso has been enacted. In this exercise it will be legitimate not to attach technical meaning to the phrase as is understood in criminal law. The phrase being the part of service rule is clearly meant to subserve its primary purpose operative upon matters of service condition and state of affairs in which a Government servant upon conviction can be dealt with. Commonly the word "sentence" is indicative of the process of judicial determination of punishment imposed upon a convicted person subjecting him to that liability. "Sentence", signifies the penalty to which a guilty is subjected. It also means by itself to pass judgment or to adjudge or to decide judicially. When the term is used as a noun, it is capable of indicating the entire judgment which may include the adjudication with regard to the crime as well as the resultant penalty. By this it can imply and connote the person undergoing the punishment. As we have indicated, here "sentenced" is a separate descriptive or qualifying term like the term "convicted" and can be considered independently.

Reasonably proper descriptive stage would not be answered unless the guilty is actually sent to imprisonment or lodged in jail upon conviction. "Sentenced" in this context would mean condemned to prison upon conviction. It follows that a Government servant otherwise free and not sent to prison would therefore not appropriately answer the description "sentence to imprisonment."

24. Similar such meaning though in a different context available in English statute, has been read into this term as natural and known to English language clearly indicating compulsive process of such person required to be punished for an offence by being sent to prison and not merely adjudicating his liability therefore. In *Kennedy v. Spratt* 1972 AC 83, before the House of Lords, a question arose about the interpretation of the phrase "shall be sentenced to imprisonment" available in the Criminal Justice (Temporary Provisions) Act (Northern Ireland) 1970 and the learned Lord Diplock in his concurring speech observed:

... When a statute requires that a person who is convicted of an offence shall be sentenced to imprisonment for a specified minimum period, the natural meaning of the words, "shall be sentenced to imprisonment" is that he shall be punished for that offence by being sent to prison.

(Italics provided)

Though the controversy there arose with regard to the power "to suspend the sentence" under the provisions of the Offenders Act (Northern Ireland) 1968, it is ample for our purpose to indicate that the import of the statute directing the Court to deal with the accused by the mandate "shall be sentenced to imprisonment" is understood to have the natural import and meaning of "punishing such person for the offence by being sent to prison."

25. The phrase "sentenced to imprisonment," therefore, is capable of conveying a natural meaning implying actual sending of the person to prison and not merely adjudging or declaring a penalty of imprisonment to which such a person would be liable. It would be indeed noteworthy to find the legislative use of the words available in the Indian Penal Code as providing for penalties by describing them category wise which substantially differ in phrase and term. In the Indian Penal Code mainly the penalty is described as "sentence of imprison" merit" as indicating mode of liability that can be imposed. Section 53 of that Code enacts the punishments to which the offenders are liable under the provisions of that Code and that includes punishments like death, imprisonment for life, imprisonment which would be rigorous or simple; similarly forfeiture of property and of fine. Penal Code uses phrases like "sentenced to imprisonment" or to be "punished with imprisonment." Without entering into the details of several sections of the Penal Code and its phraseology which is illustrative of the cases how penalty is described, it is vital to highlight that there could be a difference and a difference of substance throwing light on the true intent and object and purpose behind the use of the words like the one found in the proviso indicating

the condition or state of the person after conviction. The whole phrase, therefore, "sentenced to imprisonment" involving the preposition "to" if given a natural meaning does not exclude "a person sent to jail or prison to undergo "a penalty" nay, that appears to be its connotation in the context.

26. Even under the Code of Criminal Procedure the question of the sentence qua the accused found guilty or convicted of an offence has two facets, one being of the adjudication of the penalty and the second of its execution. As far as trial before a Court of Session, section 235 of the Code of Criminal Procedure, 1973, indicates two distinct stages by its sub-section (1) and subsection (2), the former requiring to make a judgment and the latter in case of the judgment of conviction to hear the accused on the question of sentence and then pass sentence on him according to law. Judgment of conviction therefore would be complete after the stage indicated by sub-section (2) is fully complied with. "Sentence" thus would be the part of the judgment of conviction.

27. The process, if complete, for the purpose of departmental rules would furnish a ground to proceed against a civil servant by the mere fact of his conviction and not by reason of any particular sentence or its execution or non-execution. Judicial choice of a given sentence can hardly be treated as basic or germane for the purpose of departmental action though it may be a matter to be taken into account while imposing penalty against civil servant. Further though sentence of a given kind may be imposed for variety of reasons, its execution can be postponed, suspended, and even sentence itself can be commuted or remitted. (See provisions of Chapter XXXII of the Code-particularly sections 417 to 419, 432, 433 and 434). Convicted person whose sentence of imprisonment is commuted or entirely remitted would not in a given case be lodged in imprisonment for any term. Similar would be the temporary result upon suspension or postponement of execution of sentence or upon grant of bail. Conversely though a sentence like fine be imposed, person unable to pay fine may be lodged in jail so as to undergo imprisonment in lieu thereof. Are we therefore to suppose that upon adjudication of a given sentence of imprisonment only, the civil servant would get nominal amount, while in all other cases though grave and serious he will enjoy the entitlement at normal rate to subsistence allowance ? We do not think that such an intent that will bristle with unfairness leading to invidious inequity can be attributed to the terms of the rule.

28. Several inbuilt possibilities to which we have made reference and total possible comprehension about its results compel us to interpret the terms of the proviso appended to a service rule in more an object oriented manner so as to make its meaning consistent and uniformly applicable to all Government Servants that can be dealt with once they are convicted by Court. Such a class of employees is equally available for subjecting each of them to liability under departmental rules. Conditions impending final decision in each case about continuance or otherwise will have to be conceived as enacted equal and always would be assumed to have been so intended. So perceived in the context of the

purposes of the rule providing for reduction of subsistence allowance to nominal from normal, it appears reasonable to apply the term of the phrase "sentenced to imprisonment" as distinct from the earlier phrase "convicted of an offence by the competent Court" as primarily indicating a person sent to imprisonment and as such physically unavailable to serve the State even if not proceeded departmentally and even if suspension is liable to be revoked. Emphasis clearly, in our view in this is of the fact of conviction and not of sentence involved therein.

29. The phrase thus being qualifying and having more than one meaning and available in a provision of service rules that deal with the entitlement of the civil servant to an allowance for his maintenance during the period of his suspension and not a part of any penal statute, appears to us as indicating the state of the civil servant upon conviction, in that when such a servant is physically unfree and as such either not available to be dealt with even departmentally or capable to resume duty, if so directed. For, as we stated above, it is not in dispute before us that even such a person upon conviction and until dismissed or removed continues to be the civil servant. Implicit in such a position is the possibility to revoke the suspension and recall the servant to duty for several good reasons. Only when State servant is in goal, he would be disabled to resume. While free, though convicted, still he can be asked or continued to discharge duties attached to the post. It is not impossible to conceive of civil servants possessing special skill, expertise, or being indispensable to job not being put in suspension at all though convicted for an offence by Court. Similarly convictions may vary right from trivial, technical to serious offences connected or unconnected with duty of the public servant and in given case may entail necessity of revocation of suspension. Taking all these varied possibilities into account, we prefer to read this descriptive phrase "sentenced to imprisonment" as having meaning as "subjected to imprisonment" by lodging him in prison and nothing else.

30. Moreover even if this be treated a strained construction, we tend to prefer it for more than one reason. Firstly, it will be unreasonable to attribute to the proviso an intent as subjecting the person convicted to a further penalty of reduction to a nominal rate of rupee one of his subsistence allowance though he continues to be a Government servant merely because sentence is of imprisonment which may include even a sentence till the rising of the Court. Secondly, if we were to restrict the meaning of the words "sentenced to imprisonment" as indicating penalty chosen and imposed by the Court for a particular offence, it would be clear that with regard to penalties which may be more severe than imprisonment or more lenient than one of imprisonment following conviction, a curious result would be reached, as, such convicted, person would be entitled to normal subsistence allowance. Even in a case of the civil servant found guilty of murder and subjected to penalty of death by Court, proviso will not be appropriately answered and though in jail such a person would draw at normal rate the subsistence allowance. Similarly even in a case of the civil servant found guilty for the offences of corruption like that of section 161, I. P. C. but subjected to the penalty of fine, he too would not be covered by

the proviso and even when defaulting payment of fine and lodged in prison to undergo rigorous imprisonment in lieu of fine, his entitlement at normal rate would not cease. It would be unreasonable to attribute intention to the makers of the proviso to leave out and to better treat such categories of persons though convicted of serious offences and pay them the normal rate of subsistence allowance and only subject the persons convicted of the criminal offences against whom penalty of imprisonment has been imposed which too may vary upon the circumstances available in a given case. Reasonably, therefore, we will have to read the words "sentenced to imprisonment" as indicating the state of the person convicted of an offence indicating uniform and equal detriment. That state can be reached even when the person is convicted and sentenced to death or fine but is lodged in jail either awaiting confirmation, execution or remission or even because for non-payment of fine. "Sentence" or "penalty" is a mere consequence of conviction and has to be imposed by the authority competent to fine conviction. Therefore the fact of conviction only is relevant for the purpose of departmentally dealing with the Government servant. Once there is a conviction by the competent Court, it follows that such a person can be departmentally dealt with and he is liable to be removed, dismissed or subjected to any other penalty and during the period these results are reached is further liable to be suspended or liable to be continued. It appears that upon conviction and during the pendency of the proceedings that can departmentally be taken against such Government servant, his availability and possible utility as civil servant are clear matters of relevance underlying the enactment of the proviso. So viewed, the Government servant lodged in jail or sent to prison is the only category which can conceivably be not available to be dealt with departmentally or even upon reinstatement or upon revocation of the suspension. For this the inadequate phrase "sentence to imprisonment" appears to have been added to point out adequately the state of the Government servant who is lodged in prison because of his conviction. Thirdly, a person who is lodged in prison would be covered by prison Rules with regard to his maintenance and work and make earnings from that work as are applicable to such prisoners. It is not necessary to refer in detail to the prison Rules. Suffice it to observe that a prisoner is entitled under the rules to carry on a given work and also is entitled to have his earning as prescribed by those rules. Once a person is lodged in prison, he thus has a different entitlement by virtue of the rules governing his conditions in the prison. Therefore, it is reasonable to read that rupee one has been nominally provided by the State for such a prisoner who has been subjected to different set of rules with regard to his work as well with regard to matters of his maintenance. If the person is free and out of prison, the same cannot be said of such a person, for he can still work, though under the service rules he is not entitled to work without permission.

These clear consequential considerations for reducing normal to nominal rate of subsistence allowance pre-empt a necessity to give reasonable meaning equally and universally applicable to the phrase "sentenced to imprisonment" as

indicating a person none else but who is sent to prison or has been lodged in prison. Lastly, we do feel that by importing such a meaning we are furthering justice and fairness and suppressing otherwise invidious unequal results. For this we are not required to do any violence to the words particularly understood in its proper context. As indicated above, we are inclined to interpret the terms of the proviso as equally applicable to all Government servants who are convicted and subjected to penalties that may involve consequence of sending them physically to prison. If any other interpretation is put as we have indicated above several sections of Government servants though convicted and sentenced to penalties would continue to earn the subsistence allowance at a normal rate while only a section, for no good and reasonable grounds relevant to service matters would be subjected to nominal rate of subsistence allowance which may prove a penalty of worst consequence. By interpretation it is not a sound rule to create or to reach a classification that may prima facie not accord well with the equal treatment clause available in the fundamental right under Article 16(1) of the Constitution of India. Interpretation that would subserve the equality in the matter of employment should normally be preferred rather than the one which runs counter to it. If a convicted Government servant is liable to be subjected to the punishment of removal or dismissal or to the process of reinstatement upon revocation of suspension is the class for the purposes of entitlement of subsistence for whom after the conviction and before acquittal the provision is being made by the proviso by enacting the clause "sentenced to imprisonment," it is reasonable to infer that by these words the state of all Government servants convicted of an offence is being considered as liable to reduction from normal to nominal rate of subsistence though not as a measure of penalty. Restricting the same to sentenced - to - imprisonment - servant obviously creates a class having no real nexus to the purpose of the provision. Till the Government servant is out of the prison he can be dealt with departmentally. It is as a matter of fair policy that the department may wait for the decision of his appeal. That is no reason to reduce the normal rate of subsistence to a nominal rate of allowance, because the department chooses not to proceed to deal with such a Government servant departmentally. All this shows that interpretation we seek to put on the debated clause would further the ends of justice being the source-spring for enacting measures of economic entitlement of civil servants continued without work.

31. Once we reach this conclusion in that for attracting the provisions of the proviso not only there must be a conviction by the competent Court of Government servant but he must be sent to imprisonment or he must be lodged in prison, we feel that the other questions raised about the illusory nature of the nominal subsistence allowance does not survive for consideration.

32. As we have found that the proviso is inapplicable to civil servants who are free though convicted and as petitioner is free and not lodged in jail, we hold that his entitlement to normal rate of subsistence allowance still continues. The effect of granting of bail by the appellate Court, undoubtedly is that of a temporary release of the person concerned in appeal. That would not, in our

view, make any difference as far as the entitlement of the petitioner under rule 151 to subsistence allowance. We have already stated that the facts are that during the entire period of the trial as well as even after the conviction and after the admission of the appeal, the petitioner has been on bail and was not sent to jail nor presently lodged in jail. Thus he did not therefore answer both the conditions of the proviso though he is convicted and has filed the appeal against conviction. In this view the authorities were not right in applying the proviso and directing that since the date of conviction the petitioner should only be paid subsistence allowance at the nominal rate of one rupee per month.

33. The question about the validity of the proviso particularly providing for illusory rate raised by the petitioner upon our conclusion does not survive. We accordingly allow the petition and set aside the order produced at Annexure-B. The petitioner is adjudged to be entitled to be governed by main rule 151 of the Bombay Civil Services Rules, 1959, for the purpose of subsistence allowance till he is lodged in jail upon conviction.

34. Though we allow the petition in this manner, we make no orders as to costs.