

**(1949) 09 AHC CK 0015**  
**In the Allahabad High Court**  
**Case No : First Appeal No. 166 of 1944**

Gulzar Ahmad Jafri

APPELLANT

Vs

Government of United Provinces

RESPONDENT

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**Date of Decision :** 02-09-1949

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 2  
Government of India Act, 1919 — Section 96B  
Government of India Act, 1935 — Section 210, 240, 240(2), 240(3), 243  
Police Act, 1861 — Section 7  
Specific Relief Act, 1877 — Section 42

**Citation :** AIR 1950 All 212 : (1950) 20 AWR 105

**Hon'ble Judges :** Malik, C.J;Desai, J

**Bench :** Division Bench

**Advocate :** G.S. Pathak, C.B. Agarwala and Satish Chandra, for the Appellant;  
Standing Counsel, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Malik, C.J.—Gulzar Ahmad Jafri, the appellant, was a Sub-Inspector of Police in the United Provinces and was appointed as such by the Inspector-General of Police on 28rd October, 1931. On 3rd October 1938, he was suspended by the Superintendent of Police, Jaunpur, on a charge of having demanded and accepted illegal gratification. On 20th July 1939, charges were framed against the appellant in accordance with certain rules made under the Police Act and an enquiry was held by a Board, consisting of the Deputy Inspector-General of Police and two Superintendents of Police. There is no complaint about the procedure followed at the enquiry. The appellant appeared before the Board, and the Board, ultimately, after considering the materials placed before it held that the charges were proved and the appellant was dismissed from service under orders of the Deputy Inspector. General of Police dated 18th August 1940. The appellant appealed to the Inspectors-General of Police who dismissed the appeal on 20th July 1940. The appellant then went up in revision to His Excellency the

Governor, United Provinces, but the revision was dismissed on 24th December 1940.

2. The plaintiff filed an application for permission to sue in forma pauperis on 17th February 1942. The leave was ultimately granted. The reliefs claimed by the plaintiff were as follows:

"(i) It be declared that the plaintiff's dismissal from service being illegal and ultra vires, he should still be deemed to be in service of the Crown as a Sub-Inspector of Police.

(ii) That a decree in favour of the plaintiff against the defendant be passed in the following terms:

(a) Rs. 551/4 being the amount wrongfully deducted from the plaintiffs' salary from 3rd October 1938, the date of his suspension upto the 18th August 1939 the date of his alleged dismissal.

(b) Rs. 2,100 being the amount of his pay, from the date of the plaintiff's alleged dismissal upto the date of the suit at the rate of Rs. 70/- per month. (c) The plaintiff be awarded pendente lite and future salary till the date of his reinstatement.

(iii) Plaintiff be awarded cost of this suit against the defendant."

The ground on which the plaintiff claimed the above reliefs was that the plaintiff had been appointed by the Inspector-General of Police and his dismissal by the Deputy Inspector-General of Police was illegal and reliance was placed on Section 240, Government of India Act, 1935. 3. The Federal Court, on 4th December 1941 had decided the case of Suraj Narain v. North-West Frontier Province AIR 1942 FC 3: ILR (1941) Kar 165 in which it was held that the dismissal of a Sub-Inspector, appointed by the Inspector-General of Police, by the Deputy Inspector-General of Police, was not in accordance with the provisions of Sub-section (2) of Section 240, Government of India Act 1935, and was, therefore, null and void. The defendant filed a written statement on 4th November 1942 in which it is mentioned that by reason of the pronouncement of the Federal Court the order of dismissal passed by the Deputy Inspector-General of Police on 18th August 1939 was vacated, and the Inspector-General of Police, after studying the evidence recorded by the Board, had dismissed the plaintiff on 8th July 1942 with retrospective effect from 18th August 1939. It was further pleaded that, even if the order could not be retrospective, the utmost that the plaintiff could claim was the subsistence allowance payable during the period of suspension, i.e. an extra sum of Rs. 606-10-8, at the rate of Rs. 17-8/- per mensem, being one-fourth of Rs. 70/- the substantive pay of the plaintiff for the period between 18th August 1939 and 8th July 1942. The plaintiff filed a petition in reply in which he mentioned that no intimation was given to the plaintiff of the enquiry by the Inspector-General of Police and also no opportunity was given to the plaintiff to meet the charges levelled against him. In this petition certain interrogatories

were also required to be answered and the interrogatory No. 2 was to the following effect:

"Is it a fact or not, that the plaintiff was given no intimation by the Inspector-General of Police that his dismissal by the Deputy Inspector-General of Police on the recommendation of the Board was illegal and void and, therefore, he would hold another enquiry himself and also no opportunity was given to the plaintiff to place his case before the Inspector General of Police and the order was passed behind the back of the plaintiff without any enquiry."

The answer to this interrogatory by Jasoda Nand Asthana, Head Clerk, Office of the District Supdt. of Police, Jaunpur, on behalf of the defendant was as follows:

"No. The Inspector-General of Police studied the file and the proceedings and the evidence recorded by the inquiry Board and based his findings on that material. No further opportunity was given to the plaintiff."

The parties made a statement on 13th March 1943 that they did not wish to produce any oral evidence.

4. The lower Court came to the conclusion that, the Inspector-general of Police having dismissed the plaintiff on 8th July 1942 the plaintiff could not get a declaration that he was still in service. The lower Court, however held that inasmuch as the order of the Inspector-General of Police was passed on 8th July 1942 the plaintiff must be deemed to have remained under suspension upto that date and gave him a decree for Rs. 606-10.8, being one-fourth of the substantive pay, as subsistence allowance from 18th August 1939 to 8th July 1942. The plaintiff has filed this appeal but the defendant has submitted to the order passed by the lower Court.

5. On behalf of the plaintiff reliance has been placed on Section 240, Sub-section (2), Government of India Act and on the decision of their Lordships of the Judicial Committee in AIR 1948 121 (Privy Council) and it has been urged that the order passed by the Inspector-General of Police on 8th July 1942 was illegal inasmuch as an opportunity was not given by the Inspector. General of Police to the appellant to show cause against the proposed order of dismissal.

6. On behalf of the respondent reliance is placed on Section 243, Government of India Act and on Police Act (No. V [5] of 1861) and certain rules framed thereunder, and it is said that the Deputy Inspector-General of Police had the authority to dismiss the appellant. Apart from the fact that I do not think there is much force in this contention, after the decision of the Federal Court and the Privy Council that the rules framed under the Police Act were ultra vires in view of the provisions of Section 96B Government of India Act, 1919: See Suraj Narain Anand v. North-West Frontier Provinces A. I. R 1942 F. C. 3 : ILR (1941) Kar 165 and AIR 1949 112 (Privy Council) the defendant having clearly pleaded in the written statement that the order of the Deputy Inspector-General of Police had been vacated and not having placed any reliance on the same in the lower

Court I do not think I can allow him to rely on that plea.

7. The question, therefore, narrows itself to this, whether the order of the Inspector. General of Police dated 8th July 1942 was valid. I have already said that this order was challenged, before me by Mr. Pathak, learned counsel for the appellant, only on one ground and that was that, the requirements of Sub-section (3) of Section 240, Government of India Act were not fulfilled. The relevant portion of Section 240, Government of India Act is as follows :

"(1) Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure.

(2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.

(3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken In regard to him:

Provided ....."

Dealing with Sub section (3) of Section 210, Government of India Act their Lordships of the Judicial Committee held in the AIR 1948 121 (Privy Council)

75 Ind. App. 225 that

"no action is proposed within the meaning of the sub-section until a definite conclusion has been come to on the charges, and the actual punishment to follow is provisionally determined on. Prior to that stage, the charges are unproved and the suggested punishments are merely hypothetical. It is on that stage being reached that the statute gives the civil servant the opportunity for which Sub-section (3) makes provision. Their Lordships would only add that they see no difficulty in the statutory opportunity being reasonably afforded at more than one stage. If the civil servant has been through an enquiry under Rule 55, it would not be reasonable that he should ask for a repetition of that stage, if duly carried out, but that would not exhaust his statutory right, and he would still be entitled to represent against the punishment proposed as the result of the findings of the enquiry."

It is clear, therefore, that their Lordships have held that there are two stages; the first being when the charges are enquired into and at this stage the person required to meet the charges should be given a reasonable opportunity to enter into his defence, and the second stage is when after the enquiring authority has come to its conclusions on the charges and there arises the question of the proper punishment to be awarded. A notice has then again to be given to show cause against the punishment proposed. The facts are admitted that the Inspector-General of Police merely studied the evidence recorded by the Board of enquiry and passed the order of dismissal on the basis thereof with-out giving

any further opportunity. No point was made before me that the Inspector-General of Police should not have gassed the order of dismissal without a fresh enquiry and merely on the basis of the materials placed before the Board and I need not, therefore, express any opinion on the point. The fact is admitted that no farther notice was given to the appellant to show cause against the order proposed as required by Section 240(3), Government of India Act, 1935, as interpreted by their Lordships of the Judicial Committee in the AIR 1948 121 (Privy Council) If, therefore, Section 240(3) is applicable there can be no doubt that the order of the Inspector. General of Police was illegal and was ultra vires.

8. Reliance is placed on Section 243, Government of India Act which is as follows :

"Notwithstanding anything in the foregoing provisions of this chapter, the conditions of service of the subordinate ranks of the various police forces in India shall be such as may be determined by or under the Acts relating to those forces respectively."

I have already quoted the relevant portion of Section 240. This section provides that all civil servants hold office during His Majesty's pleasure, except those who have been expressly excluded under the provisions of the Act. A member of the subordinate ranks of the various police forces in India does not, therefore, come under Sub-section (1) of Section 240, Government of India Act. The question arises whether Sub-section (2) applies only to those civil servants who hold office during His Majesty's pleasure or also to those who are excepted under Sub-section. (1) of Section 240. If this subsection applies to all civil servants, those who hold office during His Majesty's pleasure and others, then any rule to the contrary even under the Government of India Act, 1935, would be ultra vires as it was under the Government of India Act, 1919. If Sub-section (2) does not apply to a Sub-Inspector, who is a member of the sub-ordinate ranks of the police forces, Sub-section (3) will also not apply to him. In that case non-compliance with the provisions of Sub-sections (2) and (3) would not affect the question of the validity of the order passed by the Inspector-General of Police, the said order not having been challenged on any ground other than the non-compliance of the provisions of Sub-section (3) as to notice. Barring the sections quoted above and the decision of the Privy Council in AIR 1948 121 (Privy Council) no other case on this point was cited at the Bar, it being assumed that AIR 1948 121 (Privy Council) concluded the point. It has been now held in AIR 1949 112 (Privy Council) that the words "conditions of service" in Section 243 include the circumstances under which the employer is to be entitled to terminate the service. Their Lordships held in that case that the words "conditions of service" in Section 243 were wide enough to include the circumstances under which an order of dismissal could be passed and the order of dismissal passed in that case was not invalid though it was passed by an officer subordinate in rank to the Inspector-General of Police by whom the Sub-Inspector had been appointed)

9. I have already pointed out that Sub-section (2) of Section 240 clearly lays down that "no such person as aforesaid" shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed. There is no exception mentioned in this sub-section and, if the words "no such person as aforesaid" in this sub-section is meant to include those who hold office during His Majesty's pleasure and those others expressly provided for in the Government of India Act, 1936, i.e. members of the subordinate police force then no rule can be validly made for the discharge of the latter class of servant also by any authority subordinate to that by which he was appointed. The language of the subsection is absolute. Their Lordships of the Judicial Committee having held in AIR 1949 112 (Privy Council) that if there are rules to the contrary under the Police Act a subordinate police officer can be dismissed by an authority subordinate to the authority appointing him it must be held that cases of officers governed by Section 243, Government of India Act, 1935, are not covered by Section 240(2). This result would follow only if the words "no such person as aforesaid" in Section 240(2) are interpreted to mean a person who holds office during His Majesty's pleasure. The others who come u/s 248 must be deemed to be governed by their contract or by their rules of service.

10. Section 96B, Government of India Act, 1919, was as follows:

"(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.

If any such person appointed by the Secretary of State in Council thinks himself wronged by an order of an official superior in a Governor's province and on due application made to that superior does not receive the redress to which he may consider himself entitled, he may, without prejudice to any other right of redress, complain to the Governor of the province in order to obtain justice, and the Governor is hereby directed to examine such complaint and require such action to be taken thereon as may appear to him to be just and equitable.

(2) The Secretary of State in Council may make rules for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of service, pay and allowances, and discipline and conduct. Such rules may, to such extent and in respect of such matters as may be prescribed, delegate the power of making rules to the Governor-General in Council or to local Governments or authorise the Indian legislatures or local legislatures to make laws regulating the public services:

"Provided that every person appointed before the commencement of the Government of India Act, 1919, by the Secretary of State in Council to the civil

service of the Crown in India shall retain all his existing or accruing rights, or shall receive such compensation for the loss of any of them as the Secretary of State in Council may consider just and equitable.

(3) The right to pensions and the scale and conditions of pensions of all persons in the civil service of the Crown in India appointed by the Secretary of State in Council shall be regulated in accordance with the rules in force at the time of the passing of the Government of India Act, 1919. Any such rules may be varied or added to by the Secretary of State in Council and shall have effect as so varied or added to, but any such variation or addition shall not adversely affect the pension of any member of the service appointed before the date thereof.

Nothing in this section or in any rule thereunder, shall prejudice the rights to which any person may, or may have, become entitled under the provisions in relation to pension contained in the East India Annuity Funds Act, 1874.

(4) For the removal of doubts It is hereby declared that all rules or other provisions in operation at the time of the passing of the Government of India Act, 1919, whether made by Secretary of State in Council or by any other authority relating to the civil service of the Crown in India, were duly made in accordance with the powers in that behalf, and are confirmed, but any such rules or provisions may be revoked, varied or added to by rules or laws made under this section.

(5) No rules or other provisions made or confirmed: under this section shall be construed to limit or abridge the power of the Secretary of State in Council to deal with the case of any person in the civil service of the Crown in India in such manner as may appear to him to be just and equitable, and any rules made by the Secretary of State in Council under Sub-section (2) of this section, delegating the power of making rules may provide for dispensing with or relaxing the requirements of such rules to such extent and in such manner as may be prescribed:

Provided that where any such rule or provision is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by the rule or provision."

11. There was no section in the Government of India Act, 1919, similar to Section 243, Government of India Act, 1935. A Sub-Inspector of Police in the Presidency of Madras was dismissed from service on 28th February 1928, The order of dismissal had been passed by an authority subordinate to the authority appointing him. He had before that been invalidated and was drawing an invalid pension. After his dismissal the pension was stopped and he brought a suit for the recovery of his pension. The case was fought upto the Privy Council and the decision of their Lordships of the Judicial Committee in AIR 1937 27 (Privy Council) Their Lordships held in that case that Section 96B, Government of India Act, 1919, confers no right of action to enforce the rules made thereunder, including the pension rules, but on the question of the power of dismissal, by a

subordinate authority than the one appointing him their Lordships observed as follows :

"Section 96B contains the following proviso. "But no person in that service (the civil service of the Crown) may be dismissed, by any authority subordinate to that by which he was appointed." The purported dismissal of the appellant on 28th February 1928, emanated from an official lower in rank than the Inspector-General who appointed the appellant to his office. The Courts below held that the power of dismissal was infact delegated and was lawfully delegated to the person who purported to exercise it. Counsel for the respondent candidly expressed a doubt as to the possibility of maintaining this view and indeed it is manifest that if power to delegate this power could be taken under rules it would wipe out a proviso and destroy a protection contained not in rules but in the section itself. Their Lordships are clearly, of opinion that the dismissal purporting to be thus ordered in February was by reason of its origin bad and inoperative."

For the reasons stated by their Lordships in their judgment their Lordships however did not give the declaration that the order of dismissal was bad and inoperative.

12. The case of Suraj Narain Anand v. North-West Frontier Province came up for consideration before the Federal Court and was decided on 4th December 1941. Sea AIR 1942 FC 3 : I. L. R. (1941) Kar 165. Suraj Narain Anand, the plaintiff in that case, was a Sub-Inspector of Police in the North-West Frontier Province. He was dismissed in April, 1988, by the Deputy Inspector-General of Police of that province. Reliance was placed in that case on Section 7, Police Act (NO. v [5] of 1861) which is as follows :

"(Subject to such rules as the Provincial Government may from time to time make under this Act, the Inspector-General, Deputy Inspectors-General, Assistant Inspectors-General and District Superintendents of Police may at any time dismiss, suspend or reduce any police-officer of the subordinate ranks) whom they shall think remiss or negligent, in the discharge of his duty, or unfit for the same; or may award any one or more of the following punishments to any police-officer (of the subordinate ranks) who shall discharge his duty in a careless or negligent manner, or who by any act of his own shall render himself unfit for the discharge thereof, namely :

- (a) fine to any amount not exceeding one month's pay;
- (b) confinement to quarters for a term not exceeding fifteen days, with or without punishment drill, extra guard, fatigue or other duty;
- (c) deprivation of good-conduct pay;
- (d) removal from any office of distinction or special emolument."

13. By the words "police officer of the subordinate ranks" is meant an officer below the rank of the Deputy Superintendent of Police, Rules were framed as



required by Section 7, Police Act for the appointment and dismissal of different grades of officers in the subordinate police service and in the rules, as amended in 1931, a Sub-Inspector could be dismissed by the Deputy Inspector General of Police. The rule did not differentiate between Sub-Inspectors appointed before 1684 or appointed later. Their Lordships of the Federal Court were of the opinion that the provision in Section 96B, Government of India Act, 1919, was not qualified by anything corresponding to Section 243, Government of India Act, 1985, and the rules made in 1934 giving an authority subordinate to the authority appointing the right to dismiss could not prevail against Section 96-B, Government of India Act, 1919, as u/s 84 of that Act any law made by any authority in British India would be void so far as it was repugnant to any provision of that statute. That a rule which was invalid when it was made could not become valid on the new Government of India Act of 1935 coming into force on 1st April 1937. Their Lordships were also of the opinion that the words "conditions of service" in Section 248 did not include the circumstances under which an order of dismissal could be passed and the protection afforded by Sub-section (2) of Section 240 must equally be held to have been intended for the benefit of officers referred to in Section 248 as to other public servants. In the result they held the dismissal to be invalid and gave a declaration to that effect and sent the case back for decision on the other points. There was a further appeal to the Privy Council and the decision of their Lordships of the Judicial Committee is reported in the AIR 1949 112 (Privy Council) Their Lordships of the Judicial Committee were of the opinion that the words "conditions of service" were wide enough to include circumstances under which the employer could terminate a contract of service. Their Lordships then considered whether at the time when the plaintiff was dismissed there was a rule in existence made after the Government of India Act, 1919, had become inoperative giving the Deputy Inspector General of Police a right to dismiss a Sub-Inspector of Police appointed by the Inspector-General. Their Lordships were of the opinion that though u/s 96-B, Government of India Act, 1919, such a rule was invalid under the Government of India Act, 1935, by reason of Section 243, a Sub-Inspector could be dismissed by an authority subordinate to the appointing authority if the rules had so provided. This could only be possible, if, by reason of Section 243, Sub-section (2) of Section 240 was not applicable to a Sub-Inspector of Police and he was governed by the Police Act and by the rules framed thereunder by reason of Section 248. The appeal was allowed. Thereafter an application was filed for review on the ground that the new rules had come into force four days after the appellant had been dismissed. Their Lordships being satisfied on that point advised His Majesty to dismiss the appeal and to affirm the decision of the Federal Court dated 4th December 1941, *Suraj Narain Anand v. North-West Frontier Province* A. I. R. 1942 P. C. 3: (see AIR 1949 112 (Privy Council))

14. The point whether the words "no such person as aforesaid" in Sections 240(2) and 240(3) apply to all public servants or only to those who hold office during His Majesty's pleasure has not come up for consideration before the

Federal Court after the decision by the Privy Council in AIR 1949 112 (Privy Council) that the words "conditions of service" include proceedings for dismissal. On the review application in AIR 1949 112 (Privy Council) it being established that there was no valid rule under the Police Act giving an authority subordinate to that by which Anand was appointed the power to dismiss him, the appeal of the North-West Frontier Province failed.

15. Even, apart from the statutory provision contained in Section 96-B, Government of India Act, 1919, or Section 240(2), Government of India Act, 1935, under the general law (see Section 16, General Clauses Act (U. P. Act, I [1] of 1904 and Central Act, X [10] of 1897) a person should be dismissed only by the authority appointing him or some superior authority. In the absence of some law, rule or regulation which gives an authority sub. ordinate to the appointing authority the right to dismiss, it is difficult to see how a subordinate authority can pass an order of dismissal. Section 240(2), to my mind, is a statutory recognition of a well-recognised rule, while Section 240(3) introduces a technical rule about notice and it should apply only to cases to which the sub-section applies Under the rule of natural justice, all that is necessary is that due notice of the charges proposed and the punishment contemplated should be given to the person concerned so that he may have an opportunity of putting forward his defence. If such an opportunity has been given and it cannot be said that the defence was, in any way, prejudiced this technical rule introduced by Section 243 of two separate notices, the second notice being given after the enquiring authority has come to a conclusion on the charges, would not necessarily vitiate the order. In my view Section 240(2) applies only to public servants holding office at His Majesty's pleasure and not to a police officer of the subordinate ranks governed by Section 243, Government of India Act, and if Sub-section (2) of Section 240 does not apply to a police officer of the subordinate ranks, Sub-section (3) of Section 240 would be equally in applicable to him. No point was raised in the lower Court and it was not urged before us that the order of the Inspector-General of Police dismissing the appellant was in any way invalid by reason of its being contrary to any provisions of the Police Act or the rules framed thereunder. As a matter of fact, no reliance was placed on them.

16. In my opinion, Sub-section (3) of Section 240 not being applicable, the plaintiff's suit for a declaration that he was still in service was rightly dismissed.

17. Another point argued before us was whether a public servant was entitled to get a decree for arrears of pay on the ground that he had been wrongly dismissed. The law on the subject in England is summarised in Halsbury's Laws of England, Hailsham Edn., vol. 6, p. 486 as follows:

"Under the general rule at common law, no proceeding, civil criminal, is maintainable against the Sovereign in person, for the Courts being his own, they can have no jurisdiction, over him; and so far is this reasoning carried that the Crown cannot be compelled to become a patty to an Inter-pleader issue.

Redress may, however, be sought against the Crown by petition of right in civil cases arising out of contract or relating to real or personal property, or Indeed, probably, in any case, where an action can be brought against a subject, or to enforce a right to compensation given by statute or by the rules of International law, with the exception of causes of action arising out of tort or out of an employer's liability for the acts of his servants. By a parallel development in the equity of of Exchequer, it has become possible to sue the Attorney. General, as representing the Crown, for a declaration which may indirectly or, possibly, which may directly, affect the rights of the Crown. In this case the Crown is in effect forced Into Court against its will."

and again in vol. 9 at p. 692 as follows:

"Military, naval, and civil officers of the Crown are dismissible at will, and no petition of right can be brought by them to recover pay, pension or other sums to which they claim to be entitled for their services, or damages In respect of their dismissal, even If contrary to the terms of an express contract, of service. Neither have they any right of action for breach of an implied warranty of authority against the officer who engaged them."

This point was carefully considered by the Federal Court in the Punjab Province v. Tara Chand A. I. R.1947 F. C. 23: 49 Bom. L. R. 697 where a Sub-Inspector of Police had been dismissed by a Superintendent of Police, Punjab, on 19th March 1938. The suit by the Sub-Inspector was decreed to this extent that he was given a declaration that he was wrongly dismissed and was given a decree for arrears of pay for three years prior to the date of his suit on ground that Article 102, Limitation Act applied and only three years claim was within time. It was held that the principle that the Crown was not liable to pay its servants for the salary for the period he was in service was not intended to be applicable to British India.

18. Learned Standing Counsel has urged that their Lordships of the Judicial Committee must be deemed to have disagreed in AIR 1948 121 (Privy Council) with the view of the Federal Court in Tara Chand's case A. I. R. 1947 F. C. 23 : 49 BomLR 637. Mr. Lall was a member of the Indian Civil Service and he was an officer who held office at His Majesty's pleasure and though their Lordships gave him a declaration that he was still a member of the Indian Civil Service on the date of the institution of the suit they held that he had no statutory right under the Government of India Act, 1935, to recover arrears of pay by an action. It is urged that this decision would not apply to the case of a Police Officer of Subordinate ranks to whom Section 243, Government of India Act applies, his conditions of service, including his right to his pay being governed by the Police Act.

19. If we had come to the conclusion that the order dismissing the plaintiff was null and void it would have been necessary to seriously consider the question what amount, if any, was payable to the plaintiff. The plaintiff was suspended on

3rd October 1938, by the Superintendent of Police at Jaunpur on account of certain serious charges against him. It has not been urged that the order of suspension was either illegal or improper. The order of dismissal passed by the Deputy Inspector-General of Police and subsequently by the Inspector-General of Police, if null and void, could not result in an automatic reinstatement of the plaintiff, nor has the Court a power to re-instate him. It is true "that the rules about dismissal cannot be allowed to be evaded by an order of suspension being allowed to remain in force indefinitely, but it has not been suggested here that there was any malice or any attempt to go behind the law. If a person, who had been suspended, is ultimately, after the Courts had set aside an improper order of dismissal, held to have been innocent and to have, therefore, been wrongly suspended, he should no doubt get by way of compensation what he would have earned as his salary. But from the fact that the order of dismissal was not validly passed it does not necessarily follow that the public servant was innocent and his suspension order was also bad. In such a case if the public servant is ultimately held guilty and is dismissed, to direct payment of his salary for the entire period does not appear to be justified. The Court not having the power to re-instate a Sub-Inspector of Police but to merely declare that the order of dismissal passed against him is null and void, it may have to consider if it gives him-a declaration to that effect whether monetary compensation, can be given to him in such a case. If a public servant has earned his salary and it is actually payable to him, the decision of the Federal Court has held that he can claim that salary by proceedings in a Court of law. A salary which is actually payable to a public servant can be attached by his creditors to the extent mention, in Section 60, Civil P. C., but from that it does not necessarily follow that the creditor can proceed against the Government for recovery of that salary if, for some reason, the Government considers that the salary is not payable to the public servant. I may further mention that under the United Provinces Fundamental Rules made by the Governor of the United Provinces u/s 241(2)(b), Government of India Act, 1935, Fundamental Rule No. 53, "a Government servant under suspension is entitled to a subsistence grant of such amount not less than one-fourth of his pay and not more than one half of his pay as the suspending authority may direct, provided that in no case shall the amount of the subsistence grant exceed the maximum limits of leave salary on halt average pay or half average substantive pay laid down in Fundamental Rules. 87-A (2) and 89 (2)."

So there is a maximum period during which a Government servant under suspension can draw his subsistence allowance. I have already said that I do not see how the order of suspension passed in 1938 can be deemed to have come to an end specially when the orders of dismissal, if null and void, could not effect the dismissal of the officer. The question is not free from difficulty and in a proper case it may have to be considered. I do not want to express any final opinion in this case which would be merely obiter dictum.

20. In the result, therefore, this appeal is dismissed with costs.

21. Desai J.-- The appellant was appointed as a Sub-Inspector of Police on 23rd October 1931 by the Inspector General of Police, U. P. On account of some complaint an inquiry was made against him by the Supdt. of Police. He suspended him on 3rd October 1938. Then a Board consisting of the Deputy Inspector General of Police as President and two Supdts. of Police as members was constituted to hold a departmental trial of the appellant. The Board framed charges against him on 20th July 1939. As the result of this trial by the Board, the Deputy Inspector General passed an order on 18th August 1939 dismissing him from service. He preferred an appeal to the Inspector General of Police who on 20th July 1910 refused to interfere. He was drawing Rs. 70/- per month on the date of his suspension. For the period between 3rd October 1938, the date of suspension to 18th August 1939, the date of his dismissal, the Government paid him a subsistence allowance of one fourth of his salary, i.e. of Rs. 17-8-0 per month. He approached the Governor in Council for redress against the dismissal but in vain. Then he served a notice u/s 80, Civil P. C. upon the Provincial Government and getting no response sued in forma pauperis on 17th February 1942, He pleaded that the Board, having no magisterial powers, was not competent to try him because the allegation against him amounted to one of a criminal offence punishable under Penal Code, that he having been appointed by the Inspector General could not be dismissed by the Deputy Inspector General who is subordinate to him, that his suspension and dismissal were null and void and that he was in the eye of law still in service of the Crown. He claimed the reliefs of: (1) declaration that his dismissal was illegal and ultra vires and that he was to be deemed to be in service of the Crown, (2) a decree for Rs. 551/-, being the amount ""wrongfully" deducted from his salary from 30th October 1938 to 18th August 1939, (3) a decree for Rs. 2,400/- on account of his salary from 18th August 1939 to the date of the institution of the suit, at Rs. 70/- per month which was the salary at the time of his suspension, and (4) a decree for his salary at the same rate for the period from the date of the suit to the date of his re-instatement. While an inquiry was being made into his claim of being a pauper the Inspector General was advised that his dismissal by the Deputy Inspector General was illegal according to a decision of the Federal Court. He called for the proceedings of the Board and on 8th July 1942 passed another order of dismissal on the basis of the evidence recorded by the Board and after considering its findings. He made the order retrospective with effect from 18th August 1939. A copy of the order was served upon the appellant on 25th July 1942. The application to sue in forma pauperis was allowed by the Court 15th August 1942.

22. The suit was contested by the Provincial Government. They admitted all the facts but contended that the suspension was not illegal. They pleaded that the order of dismissal passed by the Deputy Inspector General on 18th August 1939 was null and void on account of the decision of the Federal Court in Suraj Narain Anand v. North-West Frontier Province A. I. R. 1942 F. C. 3 : I. L. R. (1941) Kar 165 that the proper procedure was observed by the Board in holding the inquiry,

that the appellant was dismissed by an order of the Inspector General of 8th July 1942, that the appellant, in the face of that order, was not entitled to the declaration sought by him, that there was nothing wrongfully deducted from his salary for the period of suspension, that he was not entitled to any salary after 18th August 1939, and that in any case he could not get more than Rs. 17-8-0 per month for the period from 18th August 1939 to 8th July 1942.

23. As the dispute between the parties was about Interpretation of Statutes and Rules, no oral evidence was produced by them. The learned Civil Judge who tried the suit decreed it only for Rs. 606-10-8, being the amount of subsistence allowance at Rs. 17-8-0 per month for the period 18th August 1939 to 8th July 1942. He did not grant the declaration. The decree was based on these findings.

24. The order of the Deputy Inspector General was null and void, the order of the Inspector General was valid but could take effect not from 18th August 1939 as it purported to be but from 8th July 1942, the date on which it was actually passed, the appellant was given an opportunity of showing cause against the action proposed to be taken against him by the Board, it was not at all necessary that the Board should have had magisterial powers, when there existed a valid order of dismissal it was no use declaring that the Deputy Inspector General's order was invalid, and the appellant was not entitled to anything more than the subsistence allowance for the remaining period ending on 8th July 1942.

25. From the above decree this appeal is filed by the plaintiff. There is no cross-objection by the Provincial Government.

26. Section 240, Government of India Act reads as follows:

"(1) Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure.

(2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.

(3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action, proposed to be taken in regard to him."

27. Another relevant provision of the same Act is Section 243 which is in these words:

"Notwithstanding anything in the foregoing provisions of this chapter, the conditions of service of the subordinate ranks of the various police forces in India, shall be such as may be determined by or under the Act, relating to those forces respectively".

28. Under the common law of England a civil servant of the Crown holds office *durante bene placito*, though in practice he is a permanent official and is never removed except for misconduct or inefficiency. It is an implied term of the

service of every Crown servant that he can be dismissed by the Crown at pleasure. Even if there is a special contract with him that he would be in office for a certain term that contract is deemed to be contrary to public policy and not binding on the Crown. See *Leaman v. Rex* (1920) 3 K. B. 663 : 89 L.J.K.B. 1073, in which Acton J. quoted the following from *Mitchell v. R.* (1896) 1 Q. B. 121 :

"All engagements between those in the military service of the Crown and the Crown are voluntary only on the part of the Crown, and give no occasion for an action in respect of an alleged contract".

29. Though the engagements referred to are with men in military service, the same rule applies to engagements with all other servants of the Crown. If, however:

"the terms of the appointment definitely prescribe a term and expressly provide for a power to determine "for cause" it appears necessarily to follow that any implication of a power to dismiss at pleasure is excluded. This appears to follow from the reasoning of the Board in *Gould v. Stuart* (1896) AC 575 : 65 L.J.P.C. 82." *Reilly v. King* (1934) A. C. 176 : 103 L. J. P. C. 41.

30. What is a common law rule in England is a statutory rule in India. In the Government of India Act of 1919 and also in the Government of India Act of 1935 it is expressly laid down that every member of a civil service of the Crown in India holds office during His Majesty's pleasure; vide Sections 96B and 240 respectively of the two Acts. Though the Crown has liberty to dismiss a servant at pleasure, it is possible for the liberty to be restricted or qualified. It is here both restricted and qualified. No question of public policy would arise when the Legislature itself restricts the Crown's liberty. There are restrictions placed on the liberty u/s 248, Government of India Act. There are other limitations contained in Sub-sections (2) and (3) of Section 240, though they are not on the power to dismiss at will but on the manner in which the dismissal at will can be brought about under Sub-section (2) the dismissal must be by the appointing authority or a higher authority; and under Sub-section (3) it must be preceded by reasonable opportunity to the servant of showing cause against the action proposed to be taken against him. Neither of these restrictions has anything to do with the question of dismissal at pleasure. Even when the Crown dismisses at pleasure, it must do so with due regard to the provisions of these two sub-sections. The question, when can a civil servant be dismissed, is distinct from the question by whom he can be dismissed, and what is the procedure to be observed in dismissing him. The only meaning of an office being held *durante bene placito* is that "no claim can possibly arise to salary or remuneration in respect of a period subsequent to such termination;" (*Punjab Province v. Tara Chand* A. I. R. 1947 F. C. 23 : 49 Bom. L. R. 697. (Per Zafrullah Khan J.)

31. Thus the provisions of Sub-sections (2) and (3) are really qualifications, rather than restrictions on the liberty of the Crown to dismiss at pleasure. Section 243 is a real restriction on the Crown's liberty to dismiss at will.

Notwithstanding anything contained in Section 240 the conditions of service of the subordinate ranks of the police force shall be such as may be determined by or under the Police Act. If it is laid down in the Police Act that no police-man can be dismissed at will, no police-man can be dismissed at will. A Sub-Inspector of police belongs to a subordinate rank. It is stated in Section 1, Police Act of 1861 that:

"references to the subordinate ranks of the police force shall be construed as references to members of that force below the rank of Superintendent."

In *Suraj Narain, Anand* AIR 1942 FC 3 : ILR (1941) Kar. 165 who was a Sub-Inspector of police, was treated as one of a subordinate rank by all Courts. Section 2, Police Act lays down that: "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."

32. u/s 7 the Inspector General, Deputy Inspector General and some other police officers may dismiss any police officer of a subordinate rank, but subject to such rules as may be made by the Provincial Government. The Police Regulations, 1928, contain the rules made by the Provincial Government. In this case I am concerned with the rules which were in force in 1939 when the appellant was dismissed. The relevant rules were then contained in Chap. 31, Police Regulations. Under Rule 448 of Chap. 31 dismissal is one of the punishments which can be inflicted on any police officer appointed u/s 7, Police Act. It was not contested that the appellant was appointed u/s 7. Rule 451 explains when the punishment of dismissal can be passed; it is for the benefit of the authority passing the order of dismissal and the Court is not concerned with it. Rule 453 contains the provision for the procedure to be followed before inflicting a punishment against a member of the police force. Three different kinds of proceedings can be taken against him and one of them is a departmental trial. When a Superintendent of Police receives a complaint against a police officer subordinate to him, he is required to make or cause to be made a departmental inquiry sufficient to ascertain the truth of the complaint. On the conclusion of the inquiry he is to decide whether further action is necessary, and, if so, whether the officer should be departmentally tried or criminally prosecuted. This is the gist of Rule 456. Rule 460 contains the procedure for a departmental trial. It provides for the constitution of a Board consisting of the Deputy Inspector General as President and two Superintendents of Police as members. After the departmental trial, the Deputy Inspector General is required to pass orders u/s 7, Police Act and the rules made thereunder in accordance with the unanimous or majority finding of the Board. The rule also provides for an appeal from the decision of the Board to the Inspector General.

33. The provisions of Section 243. Government of India Act, prevail over those of Section 240. The provisions of Sub-sections. (2) and (3) of Section 240 are mandatory and if a civil servant, who is not a member of a police force of a subordinate rank is dismissed in contravention of them, the dismissal would be



null and void. In AIR 1937 27 (Privy Council) the Privy Council ruled that the dismissal by a Deputy Inspector General of Sub-Inspector appointed by the Inspector General is bad and inoperative. The same view was taken by the Federal Court in the case of Suraj Narain Anand AIR 1942 FC 3 : I. L. R. (1941) Kar 165 (supra). In the case of AIR 1947 23 (Federal Court) who was appointed as a Sub-Inspector by a Deputy Inspector General but was dismissed by a Superintendent of Police, His Lordship Zafrullah Khan observed that the order ""was in the eye of the law no more than a piece of waste paper." Another Sub-Inspector Shamsul Husain appointed by the Inspector General was dismissed by a Deputy Inspector General and the High Court of Nagpur (in AIR 1949 118 (Nagpur) held the dismissal to be illegal. I must mention here that in all these three cases the dismissal was held to be invalid or inoperative, notwithstanding the provisions of Section 243, because of the view entertained by the Federal Court in the case of Suraj Narain AIR 1942 PC 3 : I. L. R. (1941) Kar 165 which was the earliest case, that the provision that a civil servant cannot be dismissed by an authority subordinate to the appointing authority was not a condition of service and that the provisions of Sub-section (2) were not affected by the provisions of Section 243. The above view of the Federal Court was reversed by the Judicial Committee on appeal in AIR 1949 112 (Privy Council) Lord Thankerton observed in that case "the right of dismissal was a condition of service within the meaning of Section 243".

34. My conclusion, therefore, is that the dismissal of a Sub-Inspector is governed not by the provisions of Section 240, but by such of the rules of the Police Regulations, 1928, as were valid and in force at the time of the dismissal. It was not claimed before us that the provisions of Section 240, particularly Sub-sections (2) and (3), would govern the case if there were no rules validly made by the Provincial Government, or if there was nothing repugnant in them.

35. I am not going into the details of the procedure adopted by the Board in departmentally trying the appellant. That is because the appellant did not allege that the Board did not follow the procedure laid down in the Rules. He did not at all plead that any of the Rules contained in the Police Regulations, were not followed. That would be a plea of fact, if he failed to raise it, the Court could not raise it on his behalf. A plea of law stands on a different footing. It can be raised by a party at any stage of the litigation. It is the function of the Court to take notice of the law applicable to the admitted or proved facts and to apply it to them. The parties have simply to place the facts before it. If the Court finds suo motu that the rules under which the Deputy Inspector-General proceeded to dismiss the appellant were ultra vires and so inoperative, it is its duty to declare that the order of dismissal was illegal.

36. The Police Regulations, 1928, contain rules made by the Provincial Government u/s 7, Police Act. They were made when the old Government of India Act of 1919 was in force. That Act did not contain any provision similar to the provisions of Section 243, current Government of India Act, with the result

that it was not open to any rule, making authority to make a rule permitting the dismissal of a Crown servant by an authority subordinate to that which appointed him. If any authority made such a rule, it would be repugnant to the statutory provisions in Section 96B that no Crown servant could be dismissed by an authority subordinate to the appointing authority. See AIR 1937 27 (Privy Council) , and AIR 1949 112 (Privy Council) the Provincial Government made a rule authorising Deputy Inspectors General to dismiss Sub-Inspectors. That rule also was made when the old Government of India Act of 1919 was in force. The current Government of India Act of 1935 did not come into force until On 1st April 1937. The rule would be valid under the current Act because Section 243 of it would take away the repugnancy between the rule and the provisions of Section 240. The subsequent coming into force of the Government of India Act of 1935, which could not and did not have retrospective effect, could not validate the rule which was invalid ab initio, This is clearly laid down by the Federal Court and the Judicial Committee in the case of Suraj Narain Anand AIR 1942 FC 3 : I L R (1941) Kar 165 and AIR 1949 112 (Privy Council) the rule was amended in parts and in certain circumstances the Deputy Inspector. General was empowered to pass an order of dismissal without a departmental trial by a Board. It could be urged that this amended part of the rule, having been enacted in 1940, was valid, but the appellant was not dismissed under the amended part. He was dismissed under another part of the rule which was snacked in 1936 and was consequently inoperative.

37. I must therefore, hold that the Deputy Inspector-General's order of dismissal was in valid and inoperative.

38. Had the matter stood as it stood on the date of the institution of the suit, the appellant would have been entitled to a declaration that he was still in service. But during the pendency of the suit another order of dismissal has been passed, this time by the Inspector-General of Police. Though this order was specifically referred to by the Provincial Government in their written statement, the plaintiff did not choose to challenge it. His counsel, however, argued that the Inspector. General did not give an opportunity to him to show cause against the dismissal. He simply called for the Board's proceedings and without any notice to the appellant passed the order of dismissal. If Section 240(3). Government of India Act applied, the procedure was certainly invalid. But as I have explained above, nothing in Section 240, applies in the case of a Sub-Inspector, and the argument fails. Since the appellant sought a declaration not only that be was wrongfully dismissed on 18th August 1939 but also that he was continuing in service, it was incumbent upon the Court to take into consideration all the facts that happened even during the pendency of the suit. A Court does not exercise its jurisdiction in the matter of declaratory relief in vain; it would not grant the relief if it is, or would be rendered, futile. It would have been futile to grant a declaratory relief to the appellant if the subsequent order of the Inspector. General was binding upon him. Though he did not attack this order on any ground, I have consider ad whether it could be attacked. Under the rules in the Police Regulations the

Inspector-General of Police had no power to dismiss a Sub-Inspector except on reference by a Board on a conflict between the Deputy Inspector-General on one side and the two Superintendents on the other. In Rule 449 it is stated that the Inspector-General may punish all Sub-Inspectors but the question of punishment of a Sub-Inspector would not go to him unless differences broke out in the Board. In the present case, the Board was unanimous and the Inspector General could not have passed the order of dismissal. But the rules themselves are invalid for the reasons stated already and whether the Inspector-General could validly pass an order of dismissal or not cannot be decided on the basis of the rules which are invalid. The onus lay upon the appellant to prove that the Inspector General's order of dismissal was not a valid and binding order and he has failed to discharge it. The position at present is that there are no valid rules in force governing the dismissal of Sub-Inspectors except perhaps Rule 460 (8), with which we are not concerned. If any principle applies, it is the common law principle of *durante bene placito*, which the appellant would be the last man to invoke.

39. In the face of the Inspector General's order of dismissal with effect from 18th August 1939, the appellant is not entitled to the declaration that he is continuing in service. He can be given a declaration that his dismissal by the Deputy Inspector-General was illegal, but it would be a useless declaration because he is not entitled to any damages on account of wrongful dismissal. Whether he is entitled to any relief for the period subsequent to 18th August 1939 would depend upon the validity of the Inspector General's order. I have already explained that the appellant has failed to show that it was an order illegal or without authority. The Inspector General professed to dismiss him with effect from 18th August 1939 but the learned Civil Judge has held that he could not give retrospective effect to his order of dismissal and accordingly treating the appellant as under suspension for the entire period ending on 8th July 1942, given him a decree for the subsistence allowance for the remaining period from 18th August 1939 to 8th July 1942. This decree will have to stand because it was not assailed through a cross-objection by the Provincial Government. No argument was advanced before us on the question whether the Inspector General could give retrospective effect to his order of dismissal. If he could, the appellant would be deemed to have been dismissed by a valid order on 18th August 1939 and he would not be entitled to any relief. If he would not, then the question would arise-whether the appellant should be treated as under suspension upto 8th July 1942, as he was treated by the learned Civil Judge, or he should be deemed to be in active service or entitled to his full salary. In the absence of any arguments, I am not prepared to hold that he could not. The appellant would therefore, not be entitled to anything for the period between 18th August, 1939 and 8th July 1942 and of course he cannot get any salary for the period after 8th July 1942.

40. I am therefore dismissing the appeal with costs.