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respect to location, area, dimension and value of the property and the auction-sale is to be duly advertised and proclaimed. Dharam Singh has deposited Rs. 20,000 in this Court in token of his *bona fides* as a bidder. This sum shall remain in the Court and will be treated as his first bid at the re-auction. In case the house is auctioned in favour of a person whose bid is higher than that of Dharam Singh, the latter will be entitled to the refund of the amount deposited by him. The official Liquidator shall make an application under Order 21, rule 66, within three weeks.

Case to come up on 19th October, 1962. There will be no order as to costs.

B.R.T.

CIVIL MISCELLANEOUS

Before S. S. Dulat, A.C.J., and P. C. Pandit, J.

R. P. KAPUR,—*Petitioner*

versus

UNION OF INDIA AND ANOTHER,—*Respondents.*

Civil writ No. 280 of 1962

1962

Sept., 21st

Constitution of India (1950)—Art. 314—All-India Services (Discipline and Appeal), Rules 1955—Rule 7—Whether violates Art. 314—Suspension—Whether can be ordered while disciplinary proceedings are pending.

Held, that Rule 49, of the Civil Services (Classification, Control, and Appeal), Rules, 1930, mentioned "suspension" as one of the penalties that could, like other penalties, be imposed on a member of the Service for good and sufficient reason. Such penalty like other penalties was, however, intended to be imposed only after the competent authority had come to a conclusion that the civil servant concerned was guilty of some act or omission requiring the imposition of a penalty. In the new rules called the All-India Services (Discipline and Appeal) Rules, 1955, this particular penalty, that is, 'suspension' has been taken out of the category of penalties mentioned in Rule 3 of those rules, so that

at present no member of the Service can be merely suspended if he is to be punished for any act or omission. Rule 7 of the Rules, however, provides that a member of the Service may be suspended while disciplinary proceedings are pending against him, in the two contingencies mentioned therein.

Held, that it is almost inconceivable that under the old rules a civil servant could never be suspended while an enquiry into his conduct was pending, for that would mean that, whatever the nature of the charge against him, he could not be prevented from performing his ordinary duties of office which, in certain circumstances, would have had the effect of creating an intolerable situation. It is true that suspension as a punishment could only be the result of an enquiry and an act of judgment on the part of the competent authority, but that would be wholly different from suspension during the pendency of an enquiry at which stage no act of judgment would be involved except, of course, judgment on the question whether the nature of the charge needed suspension from office as a desirable step. The contention, therefore, that under the old rules no civil servant could have been suspended except by way of punishment is not sound.

Held, that Rule 20 of the All-India Services (Discipline and Appeal) Rules, 1955, provides for a memorial to the President by the civil servant against any order of the Central Government or the State Government by which he is aggrieved. This memorial does not stand on a footing different from a departmental appeal to the Secretary of State provided by the old rules. There is, therefore, no prejudice caused to the petitioner by the new rules as the conditions of his service have not been altered to his prejudice by the new Rules and Article 314 of the Constitution is, therefore, not violated.

Petitioner under Articles 226, 227 and Article 19(1)(g) of the Constitution of India, read with Article 14 of the Constitution praying that a writ in the nature of mandamus *or any other appropriate writ order or direction be issued striking down the Rules, 3, 7 and 10 of the All-India Services (Discipline and Appeal), Rules being violative of Article 314 of the Constitution and quashing the order of respondent No. 2, dated 18th July, 1959.*

Petitioner in Person.

S. M. SIKRI, ADVOCATE-GENERAL, with H. L. SONI, ADVOCATE, for the Respondent.

ORDER

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DULAT, J.—The petitioner, Shri R. P. Kapur, was recruited to the Indian Civil Service in 1939 and as such became subject to certain rules framed by the Secretary of State for India. He continued to serve in that capacity till our Constitution was framed. Article 314 of the Constitution guaranteed to him, as to other members of the Indian Civil Service, "the same conditions of service as respects remuneration, leave and pension" as in force immediately before the Constitution and also guaranteed "the same rights as respects disciplinary matters or rights similar thereto as changed circumstances may permit." In 1959, the petitioner was posted as Commissioner of the Patiala Division in the Punjab State. On the 18th July, 1959, the Governor of Punjab, ordered the immediate suspension of the petitioner and the reason mentioned was that a criminal case was pending against him. His headquarters were fixed at Karnal and he was allowed certain subsistence allowance for the period of suspension. It is to challenge that order of suspension that the present petition has been filed under Articles 226 and 227 of the Constitution, and, although it was filed in February, 1962, more than two-and-a-half years after the impugned order, no serious objection to it on the ground of delay has been taken.

The petitioner points out that prior to 1955, the service rules governing him expressly mentioned 'suspension' as one of the penalties that could be lawfully imposed on a member of the Service and he had under the rules a right of

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appeal against any penalty, but that in 1955, the Union Government framed the All-India Services (Discipline and Appeal), Rules, under which 'suspension' was removed from the list of penalties, although even under the new rules a member of the Service could still be suspended. The petitioner's contention, is that his conditions of service as regards disciplinary matters or rights similar thereto have been altered to his disadvantage and there has been a violation of the constitutional guarantee contained in Article 314 of the Constitution. Further, he contends that although under the new rules in force since 1955 'suspension' is not called a penalty against which he can appeal, it is in substance still a penalty and it has been visited on him unlawfully. To appreciate the argument in support of these contentions, it is necessary to examine the rules in force immediately before the Constitution and then to ascertain whether any change detrimental to the petitioner has been brought about by the new rules. It is, of course, common ground that if in fact any alteration in the rules touching disciplinary matters has been made and it is detrimental to the petitioner's rights, then it would be a violation of Article 314 of the Constitution and consequently unlawful.

Under the old rules 'suspension' was one of the penalties that could, like other penalties, be imposed on a member of the Service for good and sufficient reason. Rule 49 of the Civil Services (Classification, Control and Appeal), Rules, 1930, which previously governed the petitioner, mentioned this. Such penalty like other penalties was, however, intended to be imposed only after the competent authority had come to a conclusion that the civil servant concerned was guilty of some act or omission requiring the imposition of a penalty. In the new rules, which now govern

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the petitioner, called the All-India Services (Discipline and Appeal), Rules, 1955, this particular penalty, that is, 'suspension' has been taken out of the category of penalties mentioned in Rule 3 of those rules, so that at present no member of the Service can be merely suspended if he is to be punished for any act or omission, Rule 7 of the Rules, however, provides that a member of the Service may be suspended while disciplinary proceedings are pending against him and the contingencies mentioned are two—

(1) If, there is a departmental charge which is to be enquired into and the nature of the charge in the judgment of the competent authority requires that in the mean time the civil servant concerned should be suspended; and

(2) when a criminal charge is pending against a member of the Service in which case Government has the discretion to order his suspension if Government finds that the civil servant is likely to be embarrassed in the discharge of his duties, or if the criminal charge involves moral turpitude or the charge is connected with the civil servant's position as a Government servant.

The petitioner contends that there was in the previous rules no provision corresponding to the provision now contained in Rule 7, under which apparently he has been suspended, and that this change in the rules is to his disadvantage. The argument is that 'suspension' is necessarily a punishment and remains so whatever the occasion for it might be, and that, while formerly 'suspension' could only be ordered as a punishment after an enquiry, the new rules by ostensibly taking it out of the category of punishments and providing

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for it at another place take away the petitioner's right to insist on an enquiry prior to suspension and his right of appeal without in any manner relieving him of the actual effect of suspension. This argument rests on the assertion that before the new rules were made that is under the old rules no member of the Service could be suspended except by way of punishment. It is this assertion which Mr. Sikri, on behalf of the State does not accept and his case is that even under the old rules a member of the Service could be suspended not by way of punishment, but pending an enquiry into his conduct, and that what was implicit in the old rules has now been explicitly stated in Rule 7 of the new Rules and there has actually been no change in that connection. He agrees, however, that while under the old rules suspension could also be imposed as a penalty, it can no longer be so imposed under the new rules but says that this change has not prejudiced anyone, for all that has happened is that the list of penalties has been reduced by one and against such reduction there can be no legitimate grievance.

Taking the first question first, it seems to me almost inconceivable that under the old rules a civil servant could never be suspended while an enquiry into his conduct was pending, for that would mean that, whatever the nature of the charge against him, he could not be prevented from performing his ordinary duties of office which in certain circumstances would have had the effect of creating an intolerable situation. It is true that suspension as a punishment could only be the result of an enquiry and an act of judgment on the part of the competent authority, but that would be wholly different from suspension during the pendency of an enquiry at which stage no act of judgment would be involved except, of course, judgment on the question whether the nature of the

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charge needed suspension from office as a desirable step. It is not suggested that no member of the All-India Services was ever suspended pending an enquiry under the old scheme of rules, and I can recall cases where officers were placed under suspension during a departmental enquiry. It seems to me that that was inherent in the very nature of things. A similar question was considered by a Division Bench of this Court in *Dr. Partap Singh* v. *The State of Punjab* (1), and the Division Bench formed the opinion that suspension during the pendency of an enquiry is a power inherent in an employer like Government and the power to suspend is always implied. I find myself in agreement with this view, and, although it is true, as the petitioner points out, that Dr. Partap Singh, the petitioner in that particular case, was not a member of an All-India Service, that does not affect the validity of the principal enunciated by the Division Bench. The contention, therefore, that under the old rules no civil servant like the petitioner could have been suspended except by way of punishment, is not, in my opinion, sound.

The petitioner's contention next is that, in any case, suspension even during the pendency of an enquiry into a charge could only be ordered for good and sufficient reasons, and that this implies an enquiry, while in the present case no such enquiry was held. The contingencies, under which such suspension can be ordered, have now been expressly mentioned in the new rules and, of course, the competent authority can order suspension only if one of those contingencies is found to exist. In the present case, the facts are clear and admitted. There was a criminal case pending against the petitioner and the allegations made were such that, if true, they involved moral turpitude. The con-

(1) I.L.R. (1962) 2 Punjab 642.

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tingency, therefore, did exist and it does not, in the circumstances, appear that there was any occasion for any particular enquiry, before the Governor came to the conclusion that the petitioner should be suspended.

The petitioner's next contention is that under the old rules, in case he was suspended during an enquiry, he had a right of appeal to the Secretary of State and this right has now been taken away by the new rules and the constitutional guarantee has thus been violated. It is clear, however, that the appeal to the Secretary of State had necessarily to be abolished in the altered circumstances. It is not, however, true that no similar provision has been made in the new rules, for Rule 20 of the All-India Services (Discipline and Appeal) Rules, 1955, expressly provides that "a member of the Service shall be entitled to submit a memorial to the President against any order of the Central Government or the State Government by which he is aggrieved". The petitioner says that this right of presenting a memorial is not the same or similar to a right of appeal, because an appeal is a substantive right while a memorial is merely a kind of concession. I am unable to find anything in the new rules to suggest that a memorial presented to the President against an order of the State Government stands on a footing different from a departmental appeal to the Secretary of State provided by the old rules. Nor is it reasonable to think that the power of the President to interfere with an order of the State Government on a memorial presented to him is more restricted in any manner than the previous right of the Secretary of State to intervene on an appeal to him. The word 'memorial' appears to have been used in Rule 20 of the new Rules, as it was possibly found a more appropriate expression to use in connection with the President of the Union. Otherwise, there is in substance no difference, and I am not

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persuaded that the right of the petitioner has been curtailed. I am, in the circumstances, unable to hold that the petitioner's conditions of service have been altered to his prejudice and Article 314 of Constitution violated.

Apart from the arguments addressed to us in Court, the petitioner later sent us a copy of a recent decision of the Bombay High Court *V. R. Gokhale* v. *The State of Bombay* (Special Civil Application No. 273 of 1961, decided on the 17th July, 1962), indicating that it supported his submissions. On looking through the judgment, I find that it does not assist his case and it was, therefore, not necessary to call for a reply from the respondents. What happened in the Bombay case was this : An Assistant Superintendent of Land Records was suspended and an enquiry into his conduct on charges of bribery was ordered. He remained under suspension for over two years while the enquiry was proceeding. No grievance was made in respect of the suspension order and the petitioner in the Bombay High Court never disputed its validity as such. At the conclusion of the enquiry, it was found that the charges were not fully proved and, in the result, the petitioner was reinstated. Then arose the question as to how the period of suspension was to be treated and the departmental authorities, without hearing the petitioner, decided that the period of suspension should be treated as leave admissible under the rules followed by extraordinary leave without pay, and it was also ordered that the period of suspension should not be treated as on duty. It was against that decision that the petitioner took the matter to that High Court claiming that the order, treating the period of suspension as not on duty and as on leave partly without pay, was prejudicial to him and he ought to have been heard. That decision

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was apparently taken on the view that the petitioner had not been fully exonerated but only the benefit of doubt had been accorded to him. The Bombay High Court felt that in those circumstances an enquiry in the presence of the petitioner was necessary before the departmental authorities came to decide that the petitioner had not been fully exonerated or to decide whether the whole of the period or only a part of it should be treated in the manner directed. In the present case the situation, which arose in the Bombay case, has not arisen and can arise only at the conclusion of the criminal case against the petitioner when Government may possibly have to decide how the period of suspension is to be treated. That decision may or may not give rise to any grievance. It is clear, therefore, that the Bombay decision relied upon by the petitioner does not help in the present case.

There remains the petitioner's general grievance that on the basis of a frivolous complaint he has been suspended from the responsible office he was holding and the suspension has lasted for over two years. It is, however, not possible for us to enter into the merits of the criminal charge against the petitioner or into the detailed justification for the Governor's decision suspending him. The first matter must be left to be judged by the Court where it is pending. The second matter was within the discretion of the Governor or the State Government, once the conditions under which suspension could be ordered were satisfied. I can well appreciate the hardship that is being caused to the petitioner, particularly by the delay in the decision of the criminal case against him, but that would not justify our exceeding the proper limits of our power. Although, therefore, the circumstances are unfortunate from the petitioner's point of view, I am not persuaded that we

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should disturb the Governor's order. This petition must, therefore, fail and I would dismiss it but, in all the circumstances, not burden the petitioner with costs.

Pandit, J.

PREM CHAND PANDIT,—I agree.

B.R.T.

APPELLATE CIVIL

Before S. S. Dulat, A.C.J., and D. K. Mahajan, J.

RATTAN CHAND AND ANOTHER,—*Appellants*

versus

BAGIRATH RAM AND OTHERS,—*Respondents.*

Regular Second Appeal No. 82 of 1953.

1962

Sept., 26th

Registration Act (XVI of 1908)—S. 49—Unregistered deed of sale of immovable property—Whether can be adduced in evidence as agreement to sell—Suit for damages for breach of contract—Whether can be based on such document.

Held, that section 49 of the Registration Act, 1908, does not prevent a party from showing from an unregistered document that an agreement to sell immovable property had actually been reached between the parties, even if that document be a deed of sale and consequently useless for proving the sale itself. There is no indication in section 49 of the Registration Act to support the view that every transaction, which may happen to concern immovable property, is a transaction 'affecting' such property, and it would not in the ordinary sense be so. What is apparently shut out by section 49 is the proof through an unregistered document of a transaction which has effect, direct and immediate, on some immovable property. An agreement to sell immovable property has as such and by itself no effect on the immovable property comprised in the agreement. It is only an agreement and like any other agreement capable of being enforced and equally capable of being the basis of a suit for damages in case breach occurs. It is significant