

APPELLATE CIVIL

Before Eric Weston C.J. and Kapur, J.

BABU RAM,—Plaintiff-Appellant,

versus

**THE DOMINION OF INDIA (NOW UNION OF INDIA),—
Defendant-Respondent.**

Regular Second Appeal No. 655 of 1950.

*Government of India Act, 1935—Sections 240 and 243—
Scope of—Police Act (V of 1861), Section 7—A police officer*

1952

March 20

appointed by the Deputy Inspector-General of Police, whether could be dismissed by a Superintendent of Police—Section 240 of the Government of India Act, whether applies.

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Held, that the conditions of service for the purpose of Section 243 of the Government of India Act, 1935, must be taken to include the conditions regulating the dismissal of subordinate ranks of the Police Force, and section 240 (2) of the Act has no application by reason of section 243. In view of section 7 of Police Act the police officer could be dismissed by the Superintendent of Police, and it was not necessary that he should be dismissed by the Deputy Inspector-General of Police.

Regular Second Appeal from the decree of the Court of Shri Tek Chand Vih, Senior Sub-Judge, Delhi, with Special Appellate Powers, dated the 19th day of July, 1950, affirming that of Shri Chander Gupta Suri, sub-Judge, 1st Class, Delhi, dated the 7th February 1950, dismissing the plaintiff's suit with costs.

M. K. MADAN, for Appellant.

BISHAN NARAIN, for A. G., for Respondent.

JUDGMENT

E. WESTON, C. J. This is a plaintiff's second appeal against the dismissal of his suit by a Subordinate Judge first Class, Delhi, which dismissal was confirmed in first appeal by the Senior Subordinate Judge exercising appellate powers.

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The appellant was a Police Officer stationed at Delhi. He had first come to Delhi in the year 1924 being posted there as a Probationer Sub-Inspector under orders of the Deputy Inspector-General, Ambala, within whose jurisdiction Delhi then was. In the year 1942 the appellant was confirmed as Assistant Sub-Inspector by the same authority, and in the year 1944 he was promoted as Sub-Inspector again at Delhi also by same authority. On the 4th of May 1945 an order was passed by the Senior Superintendent of Police, Delhi, dismissing the appellant from service. The appellant filed a departmental appeal to the Chief Commissioner who then exercised the

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power of an Inspector-General of Police. On the failure of this appeal the present suit was filed by which the plaintiff claimed a declaration that he had been wrongfully dismissed from service. By the plaintiff the order of dismissal was challenged as illegal and also as unjustified on the facts of the case. The plaintiff, however, contains no particulars on which the plaintiff based his assertion, to use the language of the prayer clause, that the order of dismissal and the order of the Chief Commissioner were "void, illegal, unjust, inoperative and unenforceable." The case before the trial Court seems to have turned upon the applicability of section 240 of the Government of India Act. It was urged that the plaintiff having been appointed by the Deputy Inspector-General of Police, Ambala, could not be dismissed by a Superintendent of Police, Delhi. It also seems to have been urged that compliance had not been made with subsection (3) of section 240 of the Government of India Act.

The case for the defendant, the Dominion of India, was that section 240 of the Government of India Act had no application by reason of section 243 of the same Act read with section 7 of the Police Act, Act V of 1861. It was also urged that the Senior Superintendent of Police who passed the order of dismissal had been granted the powers of Deputy Inspector-General of Police under a Rule, purporting to be made under section 7 of the Police Act, dated the 20th April 1933, by which the Senior Superintendent of Police purporting to be endowed with the powers of a Deputy Inspector-General in regard to the infliction of departmental punishments under Rule 16.1 of the Revised Chapter of Punishments of the Punjab Police Rules.

The trial Court negatived the contentions of the plaintiff and dismissed the suit. The first appellate Court upheld the findings of the trial Court. It is not altogether easy to understand the precise nature of those findings but, as I read the judgments, the contention based on subsection (2) of section 240 of the Government of India Act was repelled on the ground that

the Order of the 20th of April 1933 purporting to give to the Senior Superintendent of Police certain powers otherwise exercisable by Deputy Inspector-General had the effect of making the dismissal by the Senior Superintendent in accord with the requirements of section 240 (2) of the Government of India Act. In respect of subsection (3) of section 240 the finding was that this provision was overridden by section 243 of the same Act. There is no reference in the judgment of the lower appellate Court to the "Act relating to Police Forces", by reason of which the conditions of service of the plaintiff must be considered as having been determined. It may be stated, however, that the contention of the Dominion of India has been that as by section 7 of the Police Act, V of 1861, dismissal of the subordinate ranks of the Police Force may be ordered by the Inspector-General, Deputy Inspectors-General, Assistant Inspectors-General and District Superintendents of Police, therefore the order of dismissal of the plaintiff by the Senior Superintendent of Police, Delhi, is justified under this section as the plaintiff is a member of the subordinate ranks of the Police Force within the definition given in section 1 of Act V of 1861.

In the present appeal learned counsel has drawn our attention to a decision of the Federal Court *Suraj Narain v. The North-West Frontier Province* which is reported in A. I. R. 1942 F. C. at page 3. The plaintiff in that case, a Sub-Inspector of Police in the North-West Frontier Province, was dismissed from service by the Deputy Inspector-General of Police of the North-West Frontier Province. The plaintiff had entered service prior to the year 1934 and at the time he entered service the rules in force in the North-West Frontier Province, presumably made under section 7 of Act V of 1861, were that a Sub-Inspector of Police could be dismissed by the Inspector-General of Police. *Suraj Narain* in fact had been appointed by the Inspector-General of Police. In the year 1934 the Provincial Government modified the rules and provided that a Sub-Inspector could be dismissed by the Deputy Inspector-General. The Federal Court

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held that the dismissal of the plaintiff was illegal and based their decision largely on their view that sub-section (2) of section 240 of the Government of India Act was not affected by section 243 of that Act. They said :—

“ We are however, unable to hold that section 243, Constitution Act, has the effect of depriving the plaintiff of the benefit of sub-section (2) of section 240. It was argued that the expression ‘ conditions of service ’ in section 243 was wide enough to comprehend a provision as to the authority competent to terminate an officer’s tenure of office and that it was clearly the intention of the section that even this should be provided for by Indian Legislation or rules made thereunder. It was also urged that the opening words ‘ notwithstanding anything in the foregoing provisions of this chapter ’ had the effect of totally excluding the application of sections 240 and 241 to the subordinate ranks of the Police Force in India. These contentions do not seem to us warranted by the context.”

The Federal Court also took into consideration that at the time of his admission to service the plaintiff was entitled to the benefit of section 96B of the Government of India Act, 1919 and seem to have held that a change made in the Police Rules in the year 1934 could not deprive officers already in service of their existing rights and privileges.

The decision was taken in appeal to the Privy Council, the report of whose decision or rather two decisions appears in A. I. R. 1949 P. C. beginning at page 112. In the first judgment the view taken by the Federal Court, namely that the right of dismissal was not a condition of service within the meaning of section 243 of the Government of India Act, was held to be not correct. Their Lordships said :—

“ On the first question, apart from consideration whether the context indicates a special

significance to the expression 'conditions of service,' their Lordships are unable, in the absence of any such special significance, to regard provisions which prescribe the circumstances under which the employer is to be entitled to terminate the service as otherwise than conditions of the service, whether these provisions are contractual or statutory; they are therefore of opinion that the natural meaning of the expression would include such provisions. In the second place, it will be found, on a perusal of Chapter II, which includes sections 240 to 263, that subsections (2) and (3) of section 240 are the only provisions of Chapter II to which the introductory words of section 243 can be referable in relation to conditions of service, as every one of the other provisions of the chapter with one exception, deals with special classes of service, just as section 243 deals with a special class. The one exception is subsection (1) of section 240, but that provides for termination by His Majesty, and there can be no question of delegation of that power by virtue of section 243".

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Their Lordships then went on to deal with the question of the rules under which Suraj Narain had been dismissed, accepting as a fact that the Police Rules of 1937 were operative and accepting that the rule under which Suraj Narain had been dismissed was a valid rule made under the authority conferred by section 243 of the Government of India Act. In the result, an advice was submitted that the appeal should be allowed and the suit dismissed. At a later date it was brought to the notice of the Board that the rule under which Suraj Narain had been dismissed came into force some days after the order of his dismissal was passed and their Lordships reconsidered the opinion they had earlier expressed. In view of the circumstance that the appellate Province did not wish to

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offer any further argument in the case, and as the position was that Suraj Narain had been dismissed under a rule which was not in force the appeal was dismissed and the judgment of the Federal Court affirmed.

The observations made in the first judgment of the Board overruling the views expressed by the Federal Court must, however, be taken to be a final pronouncement on the point, namely that the conditions of service for the purpose of section 243 of the Government of India Act must be taken to include the conditions regulating the dismissal of subordinate ranks of the Police Force. Section 7 of Act V of 1861 so far as material is as follows :—

“ 7. Subject to such rules as the State 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.”

This section was amended to read as it reads at present, except that later amendment substituted “State” for “Provincial” as qualifying Government, by the Adaptation Order of 1937, and prior to 1937 the material part of the section read as follows :—

“The appointment of all police-officers other than those mentioned in section 4 of this Act shall, under such rules as the Local Government shall from time to time sanction, rest with the Inspector-General, Deputy Inspectors-General, Assistant Inspectors-General and District Superintendents of Police, who may, under such rules as aforesaid, at any time dismiss, suspend or reduce any police-officer whom

they shall think remiss or negligent in the discharge of his duty, or unfit for the same."

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The opinion expressed by the Federal Court in Suraj Narain's case that the intention of the legislature apparently was that rules should be framed under this section making express provision for particular classes of the subordinate ranks to be dismissable by one or other of the superior officers mentioned in the first part of section 7 of Act V of 1861 related to the section as it was before the amendment of 1937. It has been urged by counsel, however, that in the absence of rule laying down which particular ranks can be dismissed by a Superintendent of Police, which by a Deputy Inspector-General, and so on, the Superintendent of Police has no authority to dismiss a Sub-Inspector. The logical conclusion of this argument will be that no superior Police Officer mentioned in section 7 has authority to dismiss anyone, notwithstanding that section 7 gives those powers without limitation to all the superior Police officers mentioned in the section. This argument cannot be accepted. We have been referred to the Punjab Police Rules, 1934, which contain rules made under section 7 and which rules are claimed by the appellant to be applicable to him. The learned counsel for the appellant has been unable to show us any rule which restricts the power to dismiss, given by section 7 to Superintendents of Police, to any particular class of the subordinate ranks. In my opinion, accepting that section 240(2) of the Government of India Act has no application by reason of section 243 of the Act and by reason of the existence of section 7 of Act V of 1861, the argument that the plaintiff-appellant could not be dismissed by the Senior Superintendent of Police, Delhi, is without substance. It is not necessary in this view of the matter to consider whether the Rule or Order of the 20th of April 1933 purporting to confer certain powers on the Senior Superintendent of Police, Delhi, was of material effect.

A further argument has been addressed to us based upon rule 16.24 (ix) appearing in Chapter

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XVI of the Punjab Police Rules, 1934. This sub-rule reads as follows :—

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“ 16.24 (ix). No order of dismissal shall be passed in a case which has been conducted by an officer junior in rank to the Superintendent, until the accused officer has been produced before the Superintendent and has been given an opportunity of making a further oral statement in his defence.”

While there is no dispute that the main inquiry in the case of the plaintiff-appellant was made by a Deputy Superintendent of Police, counsel has not been able to show us from any place in the records of the trial Court, the first appellate Court or from the memorandum of appeal to this Court assertion that at the time the order of dismissal was passed by the Superintendent the plaintiff-appellant had not been produced before the Superintendent who passed the order, and had been denied an opportunity of making a further oral statement to that officer. We cannot possibly give heed to an argument that an allegation in the plaint that the order made was illegal or unjustified or deserved any of the other adjectives used, is a pleading of fact challenging the order as not in conformity with this rule 16.24 (ix).

There is no other point of substance in this appeal. The appeal, I consider, must fail and I would dismiss it with costs accordingly.

KAPUR J. I am of the same opinion and have nothing useful to add.