APPELLATE CIVIL

Before Inder Dev Dua and R. S. Narula, JJ.

THE STATE OF PUNJAB,—*Appellant*

versus

RAJINDER SINGH,—*Respondent.*

Regular Second Appeal No. 992 of 1963.

1965

May, 18th.

Police Act (V of 1861)—Ss. 7 and 12—Rules framed under—Punjab Police Rules (1934)—Rules 13.1, 13.4, 13.9, 13.10, 13.11 and 13.12—Assistant Sub-Inspector on list 'E'—Right of—Whether can claim promotion to the higher rank as a matter of right and cannot be reverted without compliance with Art. 311(2) of the Constitution, if his name has to be removed from list 'E' as a consequence of the reversion.

Held (1) that the fact that an Assistant Sub-Inspector's name is in List 'E' does not give any right to such an Assistant Sub-Inspector to be promoted to the rank of a Sub-Inspector. In other words, merely because an Assistant Sub-Inspector's name is included in List 'E', he cannot claim promotion to the higher rank as a matter of right;

(2) that any Assistant Sub-Inspector whose name is borne on the eligibility list (List 'E' under the Punjab Police Rules) and who is actually promoted to the higher rank on account of being borne on such a list either on a temporary or officiating basis or as a probationer, does not thereby get an indefeasible right not to be reverted to his substantive rank under any circumstances whatsoever without compliance with the provisions of Article 311(2) of the Constitution. Such a Sub-Inspector can be reverted to his substantive lower rank either as a mere administrative measure or on account of the exigencies of service or if it is found that he is not efficient or suitable to continue to work in the higher rank. It would not be necessary for the State in any of these cases to have resort to the provisions of Article 311(2) of the Constitution;

(3) that if such an Assistant Sub-Inspector of Police who is officiating as a Sub-Inspector or is working as a probationer in such higher rank is reverted to his substantive rank by way of punishment, he would be entitled to the

protection of Article 311(2) of the Constitution and any order reverting him by way of punishment without compliance with the said constitutional provision would be liable to be struck down;

(4) that even if the order of reversion in the case referred to in item 3 above is wholly innocuous and is not passed by way of punishment; but either as a necessary consequence of the order of reversion or in pursuance of it some penal consequences ensue to the incumbent of the higher post, the provisions of Article 311(2) of the Constitution would be attracted; and

(5) that if on the reversion of a Sub-Inspector of Police to his substantive rank, it is further ordered as a consequence of the reversion that his name should also be removed from list 'E' or is actually so removed because of the reversion thus either debarring him from future promotion or indefinitely postponing his chances of future promotion, the case would be hit by Article 311(2) of the Constitution as the reversion would in such a case result in penal consequences.

Case referred by the Hon'ble Mr. Justice Jindra Lal, on 26th March, 1964 *to a larger Bench for decision owing to the important question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice R. S. Narula, on 18th May,* 1965.

Second Appeal from the decree of the Court of Shri Om Parkash Sharma, Additional District Judge, Patiala, dated the 28th February, 1963, *affirming with costs that of Shri O. P. Aggarwal, Sub-Judge, 1st Class, Patiala (C), dated the 28th May,* 1962 *granting the plaintiff a decree for declaration together with consequential relief for recovery of Rs.* 1,318 *as prayed for in the plaint against the defendant with costs of the suit and dismissing the plaintiff's suit with respect to the award of interest on Rs.* 1,318 *at the rate of* 6 *per cent per annum from the date of the institution of the suit till the date of realization and granting the defendant time of two months within which to pay to the plaintiff or deposit in court the decretal amount as aforesaid, failing which the plaintiff would be entitled to recover interest on the aforesaid amount of Rs.* 1,318 *from the defendant from the date of the decree to the date of realization at the rate of* 6 *per cent per annum.*

M. S. Pannu, Deputy Advocate-General, for the Appellant.

K. D. Bhandari, and K. P. Bhandari, Advocates, for the Respondents.

JUDGMENT OF THE DIVISION BENCH

Narula, J. NARULA, J.—This judgment will dispose of two appeals. Regular Second Apeal No. 992 of 1963 has been filed by the State of Punjab against the judgment and decree of the Court of the Additional District Judge, Patiala, dated 28th February, 1963, dismissing the State's first appeal and upholding the decree of the trial Court, dated 28th May, 1962, declaring the order of reversion of Rajinder Singh, respondent, from the post of Sub-Inspector to that of Assistant Sub-Inspector of Police as null, void and ineffective. When this appeal came up for hearing before a Single Judge of this Court (Jindra Lal, J.), the learned Judge found that there was a conflict of opinion between certain judgments of Single Benches of this Court and, therefore, by a detailed order of reference, dated 26th March, 1964, directed that the papers of this appeal be laid before my Lord the Chief Justice for constituting a larger Bench to hear and dispose of this appeal.

Regular Second Appeal, No. 341 of 1962, has been filed by Bishan Dass, plaintiff, against the appellate decree of the Court of Senior Sub-Judge, Patiala, dated 27th November, 1961, accepting the appeal of the State of Punjab and reversing the decree of the trial Court, dated 26th June, 1961, and as a result dismissing the suit of Bishan Dass, appellant, for a declaration to the effect that the order reverting him from the officiating post of Assistant Sub-Inspector of Police to his substantive post of Head Constable was void and illegal. This appeal came up for hearing before another learned Single Judge of this Court (Harbans Singh, J.), and has been similarly referred to a larger Bench by the learned Judge's order, dated 19th August, 1964, in view of the conflict of decisions of the common question of law arising in both these cases.

In these appeals, it appears to be more convenient to set out the relevant Police Rules even before noticing the facts of these cases. The Punjab Government has, in exercise of its powers under sections 7 and 12 of the Police Act 5 of 1861 framed the Punjab Police Rules, 1934 (hereinafter referred to as the Police Rules). Chapter XIII of the Police Rules deals with the procedure for promotion of Police officials from one rank to another. The rules relevant for the purposes of these cases are rules 13.1,

13.4, 13.9, 13.10, 13.11 and 13.12. These rules are, for facility of reference, reproduced below:—

"13.1. (1) Promotion from one rank to another, and from one grade to another in the same rank, shall be made by selection tempered by seniority. Efficiency and honesty shall be the main factors governing selection. Specific qualifications, whether in the nature of training courses passed or practical experience, shall be carefully considered in each case. When the qualifications of two officers are otherwise equal, the senior shall be promoted. This rule does not affect increments within a time-scale.

(2) Under the present constitution of the police force no lower subordinate will, ordinarily, be entrusted with the independent conduct of investigations or the independent charge of a police station or similar unit. It is necessary, therefore, that well-educated constables, having the attributes necessary for bearing the responsibilities of uper subordinate rank, should receive accelerated promotion so as to reach that rank as soon as they have passed the courses prescribed for, and been tested and given practical training in, the ranks of constable and head constable.

(3) For the purposes of regulating promotion amongst enrolled police officers six promotion lists—A. B. C. D. E and F will be maintained.

Lists A. B. C. and D shall be maintained in each district as prescribed in rules 13.6, 13.7, 13.8 and 13.9 and will regulate promotion to the selection grade of constables and to the ranks of head constable and assistant sub-inspector. List E shall be maintained in the office of Deputy Inspector-General as prescribed in sub-rule 13.10(1) and will regulate promotion to the rank of sub-inspector. List F shall be maintained in the office of the Inspector-General as prescribed in sub-rule 13.15(1) and will regulate promotion to the rank of inspector.

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Entry in or removal from A, B, C, D, or E, lists shall be recorded in the order book and in the character roll of the police officer concerned. These lists are nominal rolls of those officers whose admission to them has been authorised. No actual selection shall be made without careful examination of character rolls.

* * * * * * *

13.4. (1) Officiating promotions to the rank of inspector shall be made by Deputy Inspectors-General of ranges and the Assistant Inspector-General, Government Railway Police. If the flow of promotion is unevenly distributed amongst ranges, the Inspector-General of Police shall make suitable transfers of Sub-Inspectors on the promotion list from one range to another.

(2) Officiating promotions to the rank of Sub-Inspector and Assistant Sub-Inspector shall be made by Superintendents of Police and Assistant Superintendent, Government Railway Police. If the flow of promotion is unevenly distributed among districts, the Deputy Inspector-General shall make suitable transfers of Assistant Sub-Inspectors and head constables on the promotion lists from one district to another.

(3) All promotions concerning upper subordinates made under this rule shall be published in the *Police Gazette* and notifications by Superintendents shall be sent in through the Deputy Inspectors-General, who shall have the power to revise such orders on recording reasons in each case. If any Superintendent has not enough men on lists D and E in this district to fill temporary appointments in either rank, which he is required to make, he shall apply to the Deputy Inspector-General for a man from another district.

* * * * * * *

13.9. (1) A list shall be maintained in each district in card index Form 13.9(1) of those head constables who have passed the lower school course and the Intermediate school course at the Police

Training School and are approved by the Deputy Inspector-General as eligible for officiating or substantive promotion to the rank of Assistant Sub-Inspector. No head constable shall be admitted to this list who is not thoroughly efficient in all branches of the duties of a constable and head constable and of established integrity.

(2) Officiating promotion to the rank of Assistant Sub-Inspector shall be made from the list prescribed in sub-rule (1), as far as possible in rotation, so as to give each man a trial in the duties of the higher rank. Substantive promotion shall be made by the Deputy Inspector-General in accordance with the principles prescribed in rule 13.1 and officiating promotion shall be made in accordance with sub-rule 13.4(2).

(3) Half-yearly reports in Form 13.9(3) on all head constables in this list shall be furnished on the 15th April and the 15th October, to the Deputy Inspector-General.

* * * * * * *

13.10. (1) A list of all Assistant Sub-Inspectors, who have been approved by the Deputy Inspector-General as fit for trial in independent charge of a police station, or for specialist posts on the establishment of Sub-Inspectors, shall be maintained in card index form by each Deputy Inspector-General. Officiating promotions of short duration shall ordinarily be made within the district concerned [*vide* sub-rule 13.4(2)], but vacancies of long duration may be filled by the promotion of any eligible man in the range at the discretion of the Deputy Inspector-General. Half-yearly reports on all men entered in the list maintained under this rule shall be furnished in the form No. 13.9(3) by the 15th October, in addition to the annual report to be submitted by the 15th April, in accordance with Police Rule 13.17(1).

(2) No Assistant Sub-Inspector shall be confirmed in a substantive vacancy in the rank of Sub-Inspector unless he has been tested for at least

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a year as an officiating Sub-Inspector in independent charge of a police station in a district other than that in which his home is situated.

13.11. List E of each range shall be published annually in the *Police Gazette*. Additions to the list may be made at any time by Deputy Inspectors-General but all such additions and the removal of all names under sub-rule 13.12(2) shall be published in the Gazette by special notification. Names shall be entered in the list in order according to the date of admission, length of police service deciding the relative position of Assistant Sub-Inspectors admitted on the same date.

13.12. (1) In filling temporary vacancies in the rank of Sub-Inspector the object shall be to test all men on list E as fully as possible in independent charges. The order in which names occur in the list should be disregarded, the opportunities of officiating in the higher rank being distributed as evenly as possible. An Assistant Sub-Inspector officiating as a Sub-Inspector should ordinarily continue so to officiate for the duration of the vacancy, and should not be reverted merely because another Assistant Sub-Inspector senior to him is not officiating. This principle may, however, be modified if in any case its observance would result in a thoroughly competent man being deprived by a man markedly his junior of an officiating appointment of more than 8 months' duration.

(2) The conduct and efficiency of men on lists D and E shall be at all times watched with special care. Any officer, who, whether in his substantive rank or while officiating as an Assistant Sub-Inspector or Sub-Inspector, is guilty of grave misconduct of a nature reflecting upon his character or fitness for responsibility, or who shows either by specific acts or by his record as a whole, that he is unfit for promotion to higher rank shall be reported to the Deputy Inspector-General for removal from list D or list E, as

the case may be. In interpreting this rule discrimination shall be shown between faults which are capable of elimination by experience and further training, and those which indicate definite incompetence and defects of character. Officers whose names have been removed from either list D or list E may be restored by order of the Deputy Inspector-General in recognition of subsequent work or conduct of outstanding merit."

I would now set out the relevant facts of Rajinder Singh's case. He was holding the substantive rank of an Assistant Sub-Inspector of Police (hereinafter referred to as A.S.I.). His name was brought on list E under the Police Rules in 1953. On 1st January, 1954, he was promoted to officiate as a Sub-Inspector of Police (hereinafter called S. I., Police). On 1st June, 1954, Rajinder Singh was placed on two years' probation as Sub-Inspector of Police. On 17th September, 1955, he was reverted to his substantive post of A.S.I., by the order of the Inspector-General of Police, Pepsu, substantially before the period of his probation. Against this order of reversion he filed an appeal to the State Government which was accepted by the Secretary to the Pepsu Government by his order Exhibit P. 10, dated 19th May, 1956. From this order it does appear that Rajinder Singh's reversion effected on 17th September, 1955, was clearly by way of punishment for alleged carelessness and irregularities. In the appellate order the State Government went into the allegations against this Police officer and gave its findings on the various charges in the following words:—

"It is thus clear that the last two charges viz., of having failed to write the case diaries himself and of having ante-dated the case diary are proved against him. As regards the severity of sentence awarded, I find that the S. P. had ordered the punishment of censure only, which the I.G.P., thought was not adequate."

On the above findings the Appellate Authority gave relief to Rajinder Singh in the matter of the quantum of punishment and observed that the period of reduction in rank already suffered by him (i.e., the period between 17th

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September, 1955 and 19th May, 1956) would meet the ends of justice. As a result, the period of reduction in rank of Rajinder Singh was limited to the period already undergone by him and it was directed by the State Government that Rajinder Singh should be reinstated as Sub-Inspector from the date of the appellate order. To this extent, the order of the Inspector-General of Police, dated 17th September, 1955, was modified.

The original period of two years' probation of this Police Officer would have come to an end on 31st May, 1956. In pursuance of the above-said appellate order, the Inspector-General of Police, Pepsu, Patiala, issued an office order Exhibit P. 14 on or about 16th August, 1956, which reads as follows:—

> "A.S.I. Rajinder Singh, No. 102/A is reinstated as Sub-Inspector with effect from 19th May, 1956 (the date on which his appeal was decided by the Chief Secretary), and is absorbed against the existing vacancy in that rank in Bhatinda district, caused by the reversion of M. Gurdev Singh, No. 99/A sent for training in Upper School Course."

Even if the period during which Rajinder Singh had suffered reversion to the lower rank (17th September, 1955 to 19th May, 1956) is excluded, his two years' probation would have come to an end on or about 2nd February, 1957. In whichever way the period of probation is calculated, it cannot be disputed that it was long after the expiry of the original period of probation of two years that Rajinder Singh, who was working in the rank of a Sub-Inspector in his automatically extended period of probation was again reverted to his substantive rank of A.S.I. under orders of the D.I.G. Police on 16th June, 1957.

It was after the above-said reversion of Rajinder Singh that warning dated 23rd July, 1957 Exhibit P. 19 was administered to him on 22nd August, 1957 in the following words :—

> "The confidential report on your working for the year 1956-57 has been classed 'C', and you have been described as corrupt, unreliable, weak and

superficial having poor power of control and command, poor organising ability, poor initiative, and lacking moral courage and readiness to expose malpractices of subordinates, preventive and detective ability, working experience of criminal law and procedure and resource. The Deputy Inspector-General of Police, Patiala Range, Patiala,—*vide* his confidential Memo No. PF/109/A-304 dated 22nd July, 1957, has directed me to warn you to remove these defects."

On 13th September, 1957, Rajinder Singh submitted representation Exhibit P. 20 for the remarks against him in the above-said warning dated 23rd July, 1957, being expunged. It is significant to note that in the said representation Rajinder Singh specifically stated that he challenged the correctness of those remarks and that he was ready to face a departmental enquiry in connection therewith.

It was in the above circumstances that Rajinder Singh filed a suit on 9th December, 1961, from which suit this appeal has arisen, challenging the order of the Deputy Inspector-General of Police dated 16th June, 1957 reverting him to his lower rank and claiming a sum of Rs. 1,318 with interest at 6 per cent per annum as consequential relief. The declaration claimed by the plaintiff in the suit was to the effect that the order of the Deputy Inspector-General of Police reducing the plaintiff from the rank of permanent Sub-Inspector of Police to that of A.S.I. was illegal, *ultra vires* and null and void and that, therefore, the plaintiff was entitled to all rights, benefits and privileges of the higher rank.

This suit of Rajinder Singh was contested on behalf of the State on various grounds. On merits the plea of the defendant-State was that the plaintiff's reduction from an officiating rank on account of unsatisfactory record is not tantamount to reduction in rank as envisaged by Article 311 of the Constitution and that therefore no show-cause notice was necessary. It was further averred that the reversion was under the order of the D.I.G. of Police, but this did not contravene Article 311 (1) of the Constitution.

Out of the pleadings of the parties as many as seven issues were framed by the trial Court. But we are concerned at this stage with Issues Nos. 2 to 4 only which are reproduced below :—

"(2) Whether the impugned order dated 16th June, 1957, amounts to reduction in rank of the plaintiff

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from the post of Sub-Inspector of Police to that of A.S.I. of Police?

(3) Whether the aforesaid impugned order is illegal, *ultra vires,* null and void, *mala fide* and unconstitutional amongst others for the reasons as detailed in para 6 of the plaint?

(4) If Issue No. 2 is proved whether the plaintiff was given a reasonable opportunity before passing the impugned order?"

On Issue No. 4 it was admitted before the trial Court on behalf of the State that no reasonable opportunity as envisaged by Article 311 of the Constitution of India had been given to the plaintiff before passing the impugned order. This issue was, therefore, decided by both the Courts below against the State and this finding has not been question before us.

By judgment dated 28th May, 1962, the Subordinate Judge, I Class, Patiala, decreed the suit of the plaintiff for the declaration claimed by him and for the sum of Rs. 1,318 but declined to grant any decree for interest. He discussed Issues Nos. 2 and 3 together and held that the reversion of the plaintiff from the higher rank to the lower one amounted to "reduction in rank" within the meaning of Article 311 of the Constitution and the order reverting him was, therefore, unconstitutional and void as it had been passed without affording the requisite opportunity to the plaintiff. The trial Court also held that the impugned order was illegal on the additional ground that it violated Article 311(1) of the Constitution as the same had been passed by an unauthorised official.

The first appeal of the State of Punjab against the above-said judgment and decree of the trial Court was dismissed by the Court of the learned Additional District Judge, Patiala, on 28th February, 1963. The relevant findings recorded by the first appellate Court in this case are reproduced in the words of the learned Additional District Judge himself:—

(i) "I have not been referred to any rules whereby the D.I.G. could be competent to pass such an order. It was only the I.G. who could do so."

(ii) "This order of reverting the plaintiff from the post of S.I. to that of the A.S.I. was clearly by way of punishment. His name was removed from the promotion list 'E', which fact was not denied even in the written statement. .... It has not been explained as to why the name of the plaintiff was removed from the promotion list 'E', if it was not by way of punishment."

(iii) The removal of the plaintiff's name from the 'E' list, which was done in consequence of the impugned order of his reversion from the post of S.I. to that of the A.S.I. did affect his chances of future promotion as S.I. or at least those chances were indefinitely postponed; and that being so, he was clearly visited by evil consequences as held in the oft-quoted authority of the Supreme Court reported as *Purshotam Lal Dhingra* v. *Union of India* (1), *Dineshwar Bhattacharyya* v. *Chief Commercial Superintendent, Eastern Railway* (2), and the authority of our own High Court in Regular Second Appeal No. 353 of 1961 decided on 24th May, 1961, *State of Punjab* v. *Watan Singh,* could further usefully be cited in support of the above view."

It is against this judgment and decree of affirmance passed by the learned Additional District Judge, Patiala, that R.S.A. 992 of 1963 has been preferred by the State of Punjab. In the order of reference Jindra Lal, J., has significantly pointed out the three findings of fact recorded by the Courts below in this case and we hold that these findings of fact are binding on us. These are that the reversion of Rajinder Singh from the post of Sub-Inspector to that of A.S.I. was on account of bad reports, that the reversion was after the expiry of the period of probation and that the reversion was ordered without serving any show-cause notice on the plaintiff.

Before dealing with the questions of law that arise in these cases it would be convenient to set out the relevant

(1) A.I.R. 1958 S.C. 36.
(2) A.I.R. 1960 Cal. 209.

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facts of R.S.A. 341 of 1962—*Bishan Das* v. *State*—also. His substantive rank was that of a Head Constable. His name was brought on list D under the Police Rules on or about 29th August, 1951, by an order of the Deputy Inspector-General of Police. This entitled him to promotion to the rank of an Assistant Sub-Inspector of Police. He was actually promoted to that higher rank on 28th August, 1952, in officiating capacity.

It appears that on 22nd June, 1954, order of reversion Exhibit P. 1 was passed by the Assistant Inspector-General of Police, Pepsu, Patiala, in the following words:—

> "While examining the record of officers for substantive promotion to the ranks of A.S.I. the Inspector-General of Police found that the confidential record of the following officiating S.Is. was unsatisfactory:—
>
> 1. .....
> 2. .....
> 3. .....
>
> .....Similarly the records of the following officiating A.S.Is. were unsatisfactory:—
>
> 1. .....
> 2. M. Bishan Dass, 1309 Patiala.
> 3. .....
> 4. .....
>
> Please, therefore, issue formal orders for their reversion with effect from 1st July, 1954."

On 24th June, 1954, order Exhibit P. 11 was issued from the office of the Inspector-General of Police, Pepsu, to the Superintendent of Police, Patiala, to serve a warning on A.S.I. Bishan Dass. This was in the following words:—

> "Please warn officiating A.S.I. Bishan Dass, No. 1309 that he has been given a 'C' report for 1953-54 and that he has been described as dishonest, moral courage and readiness to expose malpractices of subordinates weak, reputation

for fair dealing with public bad, attitude towards subordinates not satisfactory, general power of control and organising ability weak, personality and initiative weak, power of command weak, interest in modern methods of investigation poor, preventive and detective ability poor, not reliable and weak on parade. He has further been reported to be lazy in work. He should be directed to improve his work and reputation.

Orders of his reversion to the rank of H.C. are being issued separately."

Annual confidential reports according to rule 13.17 of the Police Rules can be of three kinds, i.e., 'A', 'B' and 'C'. Regarding 'C' reports it is provided in rule 13.17(2) as follows:—

"C reports—Reports in which it is recommended that the officer be passed over for promotion or that the taking of departmental action on general grounds of inefficiency or unsatisfactory conduct be considered.

In 'A' and 'C' reports detailed reasons must be given for the recommendations made.

The purport of all 'C' reports shall be communicated to the officer concerned..... Ordinarily, the submission of two successive 'C' reports regarding an officer will result automatically in the institution of departmental proceedings against him on such charge as the contents of the reports may justify."

With effect from 1st July, 1954, Bishan Dass was reverted to his substantive rank of Head Constable. As a result of his reversion his name was removed from list 'D'. Bishan Dass then filed a suit impugning the order of his reversion as being *ultra vires* Article 311 of the Constitution. It was contended by him that the removal of his name from list 'D' was a consequence of the order of reversion and that this removal of his name was an evil consequence within the meaning assigned to that

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phrase by Their Lordships of the Supreme Court in *Purshotam Lal Dhingra's case*. The suit was contested by the State. In the trial Court the plaintiff with the leave of the Court served Interrogatories under Order 11 rule 1 C.P.C. on the defendant-State. Interrogatories Nos. 6, 7 and 8 and replies thereto are relevant and are, therefore, reproduced below:—

"(6) Is it a fact that name of the plaintiff existed on Promotion List 'D' before 1st July, 1954?	(6) Para No. 6 of the interrogatories is admitted to be correct.
(7) Is it a fact that name of the plaintiff was removed from Promotion List 'D' in consequence of the order of reversion?	(7) Reply to para No. 7 is denied. It is stated that the name of the plaintiff has not been removed from the list.
(8) Is it a fact that according to Police Rules no person is considered for promotion as A.S.I. unless his name appears on Promotion List 'D'?	(8) Reply to para No. 8 of the interrogatories is admitted to be correct."

Out of the issues, which had been framed in this case it is issues Nos. 3 and 4 which are relevant and are, therefore, reproduced below:—

3. Whether the order of Inspector-General of Police, PEPSU, Patiala, No. 2/92/3398, dated 22nd June, 1954, to the Superintendent, Police, Patiala, amounts to reduction in rank of the plaintiff from the post of A.S.I. to that of Head Constable as alleged in para 5 of the plaint?

4. Whether the said order is illegal, *ultra vires*, null and void, *mala fide* and beyond authority of law for the reasons as given in para 7 of the plaint?

By judgment dated 26th June, 1961, the Court of Shri O. P. Aggarwal, Subordinate Judge, I Class, Patiala, passed a declaratory decree in favour of Bishan Dass against the State of Punjab to the effect that the order of plaintiff's

reversion in rank dated 22nd June, 1954, copy of which was Exhibit P. 8, was illegal, *ultra vires*, unconstitutional, null and void and that Bishan Dass, plaintiff, had continued as officiating A.S.I. and not as substantive A.S.I. and he was entitled to all rights, benefits and privileges available to the members of his service. On issues Nos. 3 and 4 the learned Subordinate Judge held that in view of the answers of the defendant to interrogatories Nos. 6, 7 and 8 and in view of the fact that the name of the plaintiff had in fact been removed after his reversion to the post of Head Constable, the impugned order amounted to reduction in his rank as his reversion was accompanied by the penal consequence of his chances of future promotion being postponed on account of the removal of his name from list 'D'.

The State's appeal against the decree of the trial Court was accepted by the Court of Shri Jaginder Singh Chatha, Senior Sub-Judge, Patiala, dated 27th November, 1961. The learned Senior Sub-Judge appears to have misread the reply of the State to Interrogatory No. 7 as is obvious from the following observations in his judgment:—

> "In reply to the Interrogatories put in by the plaintiff it was stated on behalf of the State that the name of the plaintiff was not removed from 'D' list in consequence of the order of his reversion."

It was on this short ground that the decree of the trial Court was reversed by the first appellate Court in this case. Subject to what is hereinafter decided on the main questions of law, which arise in these connected cases it may at once be pointed out that the learned Senior Sub-Judge was in error in reading into the reply to Interrogatory No. 7 something which was not there. The interrogatory was specific. The burden of the question was on the removal of the name from list 'D' being a consequence of the order of reversion or not. The mere vague denial in the first part of the reply would have left the position wholly ambiguous. Mere denial of Interrogatory No. 7 would have left the Court guessing as to whether the existence of the name of the plaintiff on list 'D' was being denied or whether the existence was being admitted but the removal of the name was being denied or, in the third

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alternative, whether the existence and the removal of the name were being admitted but it was being denied that the removal was not in consequence of the order of reversion. The State also seems to have realised this and, therefore, it took up a definite stand in the reply to Interrogatory No. 7 by adding to the wholesale denial the words. "It is stated that the name of the plaintiff has not been removed from the list".

This part of the reply to Interrogatory No. 7 is wholly inconsistent with what the learned Senior Sub-Judge thought the reply to be. Whereas the affidavit filed on behalf of the State was that the name of Bishan Dass, plaintiff, had in fact not been removed from the list, the Senior Sub-Judge could not have construed it to mean that the name had in fact been removed (just the contrary of the averment of the State) although it was not in consequence of the order of reversion. This part of the judgment of the first appellate Court cannot, therefore, be sustained in either event. The judgment of the trial Court on this aspect of the matter appears to be correct that the removal of the name of Bishan Dass, plaintiff from list 'D' must be held in this case to be as a consequence of his reversion. The plea of the State about the name of Bishan Dass not having been removed from list 'D' at all having been found to be false, it could not be held that though the State did not even admit the factum of the removal of the name of the plaintiff from list 'D' it should be deemed to have admitted it and to have said that the removal was not in consequence of the order of reversion, but otherwise.

Regular Second Appeal No. 341 of 1962 was then filed by Bishan Dass, plaintiff against the judgment and decree of reversal passed by the learned Senior Sub-Judge, Patiala. When this appeal came up before a learned Single Judge of this Court (Harbans Singh, J.), on 21st May, 1964, the learned Judge passed the following order after partly hearing the parties:—

> "In reply to the interrogatories, in para 7, it is stated on oath by an officer, on behalf of the State that the name of Bishan Dass was not removed from promotion list 'D'. His name, however, does not exist in the list supplied by the Department—copy Exhibit P. 10.

I would, therefore, to clear this contradiction, like to have an affidavit giving the date on which the name was removed together with the copy of the order, under which this was done. This may be filed on or before 28th May, 1964."

This order appears to have been passed under Order 41, Rule 27, Civil Procedure Code, as the learned Single Judge appears to have felt the necessity of having further evidence on the question involved in the matter and the learned Judge appears to have resorted to the provisions of Order 19, Rule 1, Civil Procedure Code and called for that evidence on affidavit. No objection to the said orders or to the course adopted by the learned Single Judge in this behalf appears to have been raised before him by any of the parties. This order was not complied with even upto 16th July, 1964, and a fortnight's adjournment was granted to the State for complying with the same on payment of Rs. 32 as costs for the unnecessary adjournment caused on account of the non-compliance with the orders within the time originally allowed by the Court.

Affidavit of Kundan Lal Dhall, Prosecuting Deputy Superintendent of Police, Sangrur, dated 25th July, 1964 was then filed in this Court. Paragraphs 3 and 4 of the said affidavit are relevant and are reproduced below:—

"3. That for tracing the order regarding the removal of the name of H. C. Bishan Dass from list 'D', Deputy Inspector-General of Police, Patiala Range, Patiala, was requested,—*vide* office No. 18480/B/17-14/60, dated 21st July, 1964, of Superintendent of Police, Sangrur.

4. That the Deputy Inspector-General of Police, Patiala,—*vide* his wireless message No. ACI/13343-44, dated 25th July, 1964, has informed that Character Roll and Confidential personal file of Bishan Dass and all office records have been thoroughly searched but orders regarding removal of his name from list 'D' are not available."

A further affidavit dated 8th August, 1964, sworn by the same Prosecuting Deputy Superintendent of Police was

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then filed in this Court. Paragraphs 3 to 6 of that affidavit are hereinbelow quoted verbatim:—

"3. That the name of H. C. Bishan Dass was approved for list 'D',—*vide* C.P.O. No. 2/31/6733, dated 29th August, 1951,—*vide* entry in his Character Roll.

4. That H. C. Bishan Dass was promoted to officiate as A.S.I. with effect from 28th August, 1952,—*vide* entry in his Character Roll.

5. That H. C. Bishan Dass was reverted from the rank of officiating A.S.I. to the rank of H. C. with effect from 1st July, 1954,—*vide* entry in the Character Roll.

6. That there is no entry in the character roll to show whether the name of H. C. Bishan Dass was removed from list 'D'."

The deposition quoted above is followed by paragraphs 7 to 11 in the same affidavit. The purport of the contents of those paragraphs is that in spite of a strenuous effort to trace out the order regarding the removal of the name of Bishan Dass plaintiff from list 'D', no such order could be traced. In para 9 of that affidavit the Prosecuting Deputy Superintendent of Police quoted the wireless message received from the Deputy Inspector-General of Police, Patiala, on 7th August, 1964, in the following words:—

"According to this office record, name of H. C. Bishan Dass, No. 250 was never removed from list 'D'."

The P.D.S.P. states that on getting the above wireless message he sent a reply on the wireless to the following effect:—

"Reference your signal No. 13857-58/C-I of today. If the name of Bishan Dass was not removed from list 'D', why his name was not included in list 'D' pertaining to 1st July, 1954 to 1st February, 1961, produced by your office on 21st March, 1961, in the Court of Sub-Judge, Patiala. Reply today. Repeat today."

In para 11 of the affidavit the P.D.S.P. then reproduced the final reply stated to have been received by him from the D.I.G., Police, Patiala Range, Patiala, in the following words:—

> "According to this office record, the name of H. C. Bishan Dass did not exist on list 'D' for the period from 1st July, 1954 to 1st February, 1961. As such, it was not included in the list produced in Court on 21st March, 1961. It can be argued that H. C. Bishan Dass was untrained and question of bringing his name on regular list 'D' does not arise."

It appears that from the above advice given by the D.I.G., Police, about it being possible to argue that the name of H.C. Bishan Dass had not been brought on 'regular' list 'D' a hint was taken by Kundan Lal Dhall, Prosecuting Deputy Superintendent of Police. This appears from a further affidavit dated 25th August, 1964, voluntarily sworn by the P.D.S.P., and filed in this Court. By this affidavit the P.D.S.P. wants this Court to believe that while swearing to the contents of paragraph 3 of his original affidavit dated 8th August, 1964, the deponent had omitted on account of a typographical error the word 'provisional' after the words "list 'D' ". This is how the affidavit of the P.D.S.P., dated 25th August, 1964, proceeds:—

> "3. That I had submitted an affidavit to the Advocate-General for filing.....
>
> 4. That para No. 3 of that affidavit is reproduced as follows:—
>
> "That the name of H. C. Bishan Dass was approved for list 'D',—*vide* C.P.O. No. 2/31/6733, dated 29th August, 1951,—*vide* entry in his character roll."
>
> 5. That the words "Provisional" after the words "list 'D' " in para No. 3 of the affidavit dated 8th August, 1964, are omitted, which is a type mistake and has now come to notice."

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This affidavit dated 25th August, 1964, had been filed voluntarily without being called for by this Court. The basis on which reference is made to 'Provisional' list 'D' has not been disclosed. The Police Rules do not provide for any 'Provisional' list 'D' and for any separate "regular" list 'D'. Head Constables are divided according to the Police Rules into two categories in the matter of promotion, namely, those whose names are borne on list 'D' and those whose names are not so borne. There seems to be no justification whatever according to the Police Rules for coining out a third category of Head Constables for the purposes of promotion whose names are brought on a 'Provisional' list 'D'. No such list is provided in the Police Rules and none has been made available to this Court. This appears to be only a crude attempt on the part of the Prosecuting Deputy Superintendent of Police on taking a hint from his superiors to improve the case of the State at the second appellate stage. The respondent can hardly be congratulated for such an attempt.

As stated in the opening part of this judgment the case then came up before Harbans Singh, J., on 19th August, 1964, and was directed to be referred to a larger Bench. After hearing the learned counsel for the parties and before directing a reference to a larger Bench the learned Judge referred in detail to the interrogatories and to the affidavits filed by the State in pursuance of orders of this Court. The learned Single Judge then recorded the following inference after appraising the evidence:—

> "We must, therefore, take it that the plea of the appellant that as a consequence of the order of reversion his name was removed from the list, is correct and this appeal must be decided on this basis."

Be that as it may, we are inclined to hold in the circumstances already adverted to above that even without taking any assistance from the additional evidence produced by the State in this Court and on the basis of the record which was before the Courts below and we accordingly hold that the removal of the name of Bishan Dass appellant from list 'D' was in fact as a consequence of the impugned order of his reversion from the officiating rank

of Assistant Sub-Inspector of Police to that of his substantive rank of Head Constable.

This is how both the above appeals came up for hearing before us. Ground is now clear for dealing with the principal question of law that arises in these cases and on which question there appears to be a *prima facie* conflict in the decisions of various Single Branches of this Court. Though the common question of law arising in these two cases has not been formulated in either of the orders of reference as the whole cases were being referred to a larger Bench, the common question that seems to emerge from both the cases may be formulated thus:—

> "Whether removal of the name of a Police Officer from list 'E' or list 'D', as the case may be, in consequence of an order of reversion from the higher rank to the lower rank can be deemed to be by way of punishment; and if so, would such reversion (as a consequence of which the name of the incumbent is removed from list 'E' or list 'D') not amount to reduction in rank within the meanings of Article 311(2) of the Constitution."

In the basic authority of the Supreme Court in *Purshotam Lal Dhingra* v. *Union of India* (1), it has been held, *inter alia*, as follows:—

> "In short, if the termination of service is founded on the right flowing from contract or the service rules then *prima facie*, the termination is not a punishment and carries with it no evil consequences and so article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with.
>
> "The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences . Thus if the order entails or provides

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for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion", then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty. The use of the expression "terminate" or "discharge" is not conclusive. In spite of the use of such innocuous expressions, the court has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to? If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and article 311, which give protection to government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant."

It has thus been authoritatively decided by Their Lordships of the Supreme Court that it is necessary to follow the mandatory requirements of Article 311(2) of the Constitution if an officiating government servant or a probationer is reverted to the lower rank by way of punishment and that such reversion would be deemed to be by way of punishment if the impugned order either provides for or "entails", *inter alia*, postponement of his future chances of promotion. Their Lordships say that if this happens, the circumstances may indicate that although in form the Government had purported to exercise its right to reduce the servant to a lower rank under the rules, in truth and reality the Government has reduced him to a lower rank by way of penalty.

In *Union of India* v. *Jeewan Ram* (3), it was held that the plaintiff had been deprived of his dearness allowance and house rent allowance during his suspension and that in spite of the order providing for one month's pay in lieu of notice, the termination of Jeewan Ram's services was certainly of a penal nature and was by way of punishment and the provisions of section 240(3) of the Government of India Act, 1935 [corresponding to Article 311(2) of the Constitution] were, therefore, attracted and the order of termination of service was illegal and ineffective. In *Madhava Laxman Vaikunthe* v. *State of Mysore* (4), it was held that though mere deprivation of higher emoluments as a consequence of reversion cannot amount to "evil consequences" referred to in the second test in *Purshotam Lal Dhingra* v. *Union of India* (1), but it was not a simple case of reversion because as a result of the order of reversion the government servant in that case had lost his seniority as a Mamlatdar which was his substantive post and that the order of reversion was visited with such a consequence as would bring the case within the test of punishment as laid down in *Purshotam Lal Dhingra's case.*

In *Sukhbans Singh* v. *State of Punjab* (5), it was held that Article 311 of the Constitution makes no distinction between permanent government servants and officiating or temporary government servants or probationers but that the protection of that Article can be available only where the reduction in rank is sought to be inflicted by way of punishment and not otherwise. It was held in that case that a probationer can be reverted to his original post under the service rules even without assigning any reason if his work is found to be unsatisfactory, and that the provisions of Article 311(2) of the Constitution do not apply to such a situation. Their Lordships of the Supreme Court, however, emphasised that if a probationer is reverted to his original post by way of punishment for misconduct, the provisions of Article 311(2) become applicable and the reversion made without complying with the provisions of Article 311(2) would be illegal. In that particular case it was held by the Supreme Court that the reversion of Sukhbans Singh was by way of punishment though the order of reversion did not by itself indicate any such thing.

(3) A.I.R. 1958 S.C. 905
(4) A.I.R. 1962 S.C. 8.
(5) A.I.R. 1962 S.C. 1711.

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In *P. C. Wadhwa* v. *Union of India* (6), it was held, *inter alia*, as follows:—

"In our view Explanation 4 to rule 3 shows clearly enough that a member of the service cannot claim the right of officiating in a higher post merely by reason of his seniority and even when he is officiating in a higher post he may be reverted after a trial in that post or for administrative reasons and such reversion does not amount to reduction in rank within the meaning of rule 3. The existence of such a rule negatives the claim of the appellant that he has the right to officiate in a post on the higher scale and any reversion from that officiating post amounts to reduction in rank within the meaning of Article 311 of the Constitution."

"The admitted position is that the appellant was reverted to the post of Assistant Superintendent of Police by an order dated November 3, 1958. The reversion was not due to the return of the permanent incumbent from leave or deputation or for any administrative reasons. It is also admitted that officers junior to the appellant continued to officiate in the senior scale while the appellant was reverted. In its written statement the respondent-State took the stand that the appellant was tried as Superintendent of Police and on trial he was found to be immature. It was further stated that his reversion had nothing to do with the departmental proceedings instituted against him on July 18, 1958..... On all these grounds the contention of the appellant is that he has really been reverted by way of punishment though the order of reversion is expressed in innocuous terms.

We are inclined to agree with this contention of the appellant. It should be made clear, however, that when a person is reverted to his substantive rank, the question of penal consequences in the matter of forfeiture of pay or loss of seniority must be considered in the context of his

(6) A.I.R. 1964 S.C. 423.

substantive rank and not with reference to his officiating rank from which he is reverted, for every reversion must necessarily mean that the pay will be reduced to the pay of the substantive rank. In the case before us the appellant has not merely suffered a loss of pay which was inevitable on reduction in rank, but he has also suffered loss of seniority as also *postponement of future chances of promotion to the senior scale.* A matter of this kind has to be looked at from the point of view of substance rather than of form."
(Italicised by me).—

"Therefore, what is to be considered in a case of this nature is the effect of all the relevant factors present therein. If on a consideration of those factors the conclusion is that the reduction is by way of punishment involving penal consequences to the officer, even though Government has a right to pass the order of reduction the provisions of Article 311 of the Constitution are attracted and the officer must be given a reasonable opportunity of showing cause against the action proposed to be taken against him. Our conclusion is that in the present case the appellant was reverted by way of punishment but he was given no opportunity of showing cause against the action proposed to be taken against him."

In *Jagdish Mitter* v. *Union of India* (7), it was held by Gajendragadkar, J., (as His Lordship then was) as follows:—

"It is true that the tenure held by a temporary public servant or a probationer is of a precarious character. His services can be terminated by one month's notice without assigning any reason either under the terms of contract which expressly provide for such termination or under the relevant statutory rules governing temporary appointments or appointments of probationers. Such a temporary servant can also be dismissed

(7) A.I.R. 1964 S.C. 449.

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in a punitive way; that means that the appropriate authority possesses two powers to terminate the services of a temporary public servant; it can either discharge him purporting to exercise its powers under the terms of contract or the relevant rule, and in that case, it would be a straightforward and direct case of discharge and nothing more; in such a case, Article 311 will not apply. The authority can also act under its power to dismiss a temporary servant and make an order of dismissal in a straightforwarded way; in such a case, Article 311 will apply.

This simple position is sometimes complicated by the fact that even while exercising its power to terminate the services of a temporary servant under the contract or the relevant rule, the authority may in fairness enquire whether the temporary servant should be continued in service or not. It is obvious that temporary servants or probationers are generally discharged, because they are not found to be competent or suitable for the post they hold. In other words, if a temporary servant or a probationer is found to be satisfactory in his work, efficient, and otherwise eligible, it is unlikely that his services would be terminated, and so, before discharging a temporary servant, the authority may have to examine the question about the suitability of the said servant to be continued and acting bona fide in that behalf, the authority may also give a chance to the servant to explain, if any complaints are made against him, or his competence or suitability is disputed on some grounds arising from the discharge of his work; but such an enquiry would be held only for the purpose of deciding whether the temporary servant should be continued or not. There is no element of punitive proceedings in such an enquiry; the idea in holding such an enquiry is not to punish the temporary servant but just to decide whether he deserves to be continued in service or not. If as a result of such enquiry, the authority comes to the conclusion that the temporary servant is not suitable to be continu-

ed it may pass a simple order of discharge by virtue of the powers conferred on it by the contract or the relevant rule; in such a case, it would not be open to the temporary servant to invoke the protection of Article 311 for the simple reason that the enquiry which ultimately led to his discharge was held only for the purpose of deciding whether the power under the contract or the relevant rule should be exercised and the temporary servant discharged."

From this judgment of the Supreme Court it is clear that if the enquiry is held only for the purpose of deciding whether the officiating government servant or the probationer should be allowed to continue in the higher rank or not the provisions of Article 311 are not attracted, but if there is an element of punitive proceedings in such enquiry or something beyond reversion takes place which injures the government servant and places him in a position worse than that in which he was before he started officiating in the higher rank, the reversion results in penal consequences. In that case it was also held by the Supreme Court that the motive operating on the mind of the authority in reverting an officiating government servant or in terminating the services of a temporary servant does not alter the character of the termination or reversion and is not material in determining the said character. In the ultimate analysis Their Lordships of the Supreme Court held in *Jagdish Mitter's* case (*ibid*) as follows:—

"When an authority wants to terminate the services of a temporary servant, it can pass a simple order of discharge without casting any aspersion against the temporary servant or attaching any stigma to his character. As soon as it is shown that the order purports to cast an aspersion on the temporary servant, it would be idle to suggest that the order is a simple order of discharge. The test in such cases must be: does the order cast aspersion or attach stigma to the officer when it purports to discharge him? If the answer to this question is in the affirmative, then notwithstanding the form of the order, the termination of service must be held, in substance, to amount to dismissal. That being so,

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we are satisfied that the High Court was in error in coming to the conclusion that the appellant had not been dismissed, but had been merely discharged. It is conceded that if the impugned order is construed as one of dismissal, the appellant has been denied the protection guaranteed to temporary servants under S. 240 (3) of the Government of India Act, 1935, or Article 311(2) of the Constitution, and so, the order cannot be sustained."

In *State of Bihar* v. *Gopi Kishore Prasad* (8), it was held (in para 6 of the A.I.R. report) as follows:—

"It would thus appear that in the instant case, though the respondent was only a probationer, he was discharged from service really because the Government had, on enquiry, come to the conclusion rightly or wrongly, that he was unsuitable for the post he held on probation. This was clearly by way of punishment and, therefore, he was entitled to the protection of Article 311(2) of the Constitution. It was argued on behalf of the appellant that the respondent, being a mere probationer, could be discharged without any enquiry into his conduct being made and his discharge could not mean any punishment to him, because he had no right to a post. It is true that, if the Government came to the conclusion that the respondent was not a fit and proper person to hold a post in the public service of the State, it could discharge him without holding any enquiry into his alleged misconduct. If the Government proceeded against him in that direct way, without casting any aspersions on his honesty or competence, his discharge would not, in law, have the effect of a removal from service by way of punishment and he would, therefore, have no grievance to ventilate in any court. Instead of taking that easy course, the Government chose the more difficult one of starting proceedings against him and of branding him as a dishonest and an incompetent officer. He had the right, in those

(8) A.I.R. 1960 S.C. 689.

circumstances, to insist upon the protection of Article 311(2) of the Constitution."

In *Union of India* v. *Jai Chand Sawhney* (9), it was held by a Division Bench of this Court (S. B. Capoor and A. N. Grover, JJ.), that where the only reasonable inference that can be drawn from the facts of a particular case is that the authorities wanted to punish the employee for what they thought was misconduct on his part and for that reason terminated his service, the provisions of section 240 of the Government of India Act would apply notwithstanding the fact that the order terminating the service was couched in wholly innocuous language.

In *Ved Parkash Vohra* v. *State of Punjab* (10), Shamsher Bahadur, J., held that it was in the context of all the events of a case that it had to be decided whether the impugned order was by way of punishment or not.

In *State of Bombay* v. *F. A. Abraham* (11), it was held that a person officiating in a post has no right to hold it for all times and when the permanent incumbent comes back and the person officiating is naturally reverted to his original post, there is no reduction in rank. It was also held that sometimes a person is given an officiating post to test his suitability to be made permanent in it later; and that even in such a contingency it is an implied term of the officiating appointment that if he is found unsuitable, he would have to go back. It was held that if the appropriate authorities find such an officiating government servant unsuitable for the higher rank and then revert him back to his original lower rank the action taken is in accordance with the terms on which the officiating post had been given and it is in no way a punishment and, therefore, no reduction in rank within the meanings of Article 311 of the Constitution, when the reversion has not in any way affected him so far as his conditions and prospects of service are concerned. The words "when the reversion has not in any way affected him so far as the conditions and prospects of service are concerned", are important and significant in the above-said judgment of the Supreme Court.

(9) 1962 P.L.R. 807.
(10) 1964 P.L.R. 1224.
(11) A.I.R. 1962 S.C. 794.

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In an unreported judgment of this Court (D. K. Mahajan, J.) in Civil Writ No. 1877 of 1963—*Jagat Singh, Excise Sub-Inspector* v. *The Punjab State*, it was held as follows:—

"With regard to the applicability of Article 311(2) of the Constitution to persons holding officiating or temporary posts, the matter was again considered by the Supreme Court in *Champaklal Chimanlal Shah* v. *The Union of India*, Civil Appeal No. 472 of 1962, decided on 23rd October, 1963, and no departure was made from the decision in *Jagdish Mitter's case*. As I understand from both these judgments, their Lordships have laid down that in the circumstances of each case it has to be determined whether an order which ostensibly is within the terms of the contract or the rules has been really passed by way of punishment either terminating the services of a Government servant or reducing him in rank It hardly matters whether the Government servant is holding a temporary or a permanent post. If the facts of the present case are examined, it will be found that a charge-sheet was served on the petitioner, his explanation was called which was found unsatisfactory and a warning was issued and within five days of the warning he was reduced in rank. The facts are too eloquent to admit of any other interpretation but the one, namely that the demotion was by way of punishment.

"Mr. Pannu who appeared for the State of Punjab contended that the warning was not punishment within the meaning of rule 4 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952. The first punishment mentioned in the rule is censure. On the facts of the present case I am inclined to hold that the so-called warning was in fact consure and, therefore, it was punishment by way of censure which led to his demotion from the rank of the Excise Sub-Inspector to that of the clerk. Therefore, the provisions of Article 311(2) are attracted in this case."

Coming now to the precise question before us, there are two sets of judgments. The first set of these decisions is of those cases which have been decided in favour of the government servants. Earliest, chronologically is the judgment of the Calcutta High Court in *Dineshwar Bhattacharyya* v. *Chief Commercial Superintendent, Eastern Railway* (2). In that case the Selection Board had put the approved candidates in a panel from which officiating appointments were made strictly according to priority. An officiating appointment could lead to the person holding the post being confirmed therein. An order was passed by the Chief Commercial Superintendent, Eastern Railway, to the effect that D. Bhattacharyya being surplus to requirement would revert to Class III with effect from 1st June, 1952. Against his order Bhattacharyya appealed to the General Manager of the Railway. The General Manager reverted Bhattacharyya to his substantive post and also struck out his name from the panel. It was held by the Calcutta High Court that the mere sending back of the petitioner to his substantive post could not be considered as a punishment. He was in an officiating post and had no legal right to continue there. But, so held the Calcutta High Court, the striking of the petitioner's name from the panel had affected his future right of promotion. The Calcutta High Court further went on to suggest that the Railway authorities should have given a show-cause notice to Bhattacharyya before removing his name from the panel. Be that as it may, the effect of the judgment of the Calcutta High Court is that the removal of the name from the panel amounted to punishment and in that view of the matter the correct legal position would be that a show-cause notice had to be given to Bhattacharyya before he was reverted from the higher officiating rank. The subsequent notice for removal of the name from the panel may have been necessary to satisfy the principles of natural justice but is not necessary for the purposes of satisfying the provisions of Article 311 of the Constitution.

Then comes an unreported judgment of a learned Single Judge of this Court (Mehar Singh, J.), dated 24th May, 1961, in Regular Second Appeal No. 353 of 1961, *State of Punjab* v. *Wattan Singh*. The relevant facts of that case were these. Wattan Singh, Head Constable was appointed officiating A.S.I., but was subsequently reverted to his substantive post as it was found by the two Superintendents of Police under whom he had worked that his

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honesty was doubtful. As a result of his reversion his name was also removed from list 'D', the list of candidates for appointment as Assistant Sub-Inspectors of Police maintained under the Police Rules. In a suit filed by Wattan Singh he claimed that his reversion was as a measure of punishment and he claimed the usual declaration and arrears of salary on the basis that he had continued in the higher rank in officiating capacity. The suit was decreed by the trial Court and the first appeal of the State was dismissed by the District Judge, Patiala. The second appeal filed by the State was dismissed by Mehar Singh, J., with the following observations:—

> "No doubt in the case of an officiating Government servant, the proper authority has the power to revert such a Government servant to his substantive post, and such reversion by itself is not reduction in rank as that expression is used in Article 311 of the Constitution, but if it is accompanied with a penal consequence, such as a bar to his future promotion, as in the present case because of the removal of the name of the respondent from the list of candidates for promotion, then it does amount to reduction in rank and the procedure laid down in Article 311 of the Constitution must be followed. That was not done in this case and the conclusion of the Courts below is unexceptional that the reduction in rank of the respondent in the present case is not according to law and cannot be maintained. He is, therefore, entitled to declaration that he continues to be Assistant Sub-Inspector of Police."

In *Punjab State* v. *Gurbax Singh*, (12), it was held by D. K. Mahajan, J., as follows:—

> "Reversion, when it is by way of punishment offends the provisions of Article 311(2) of the Constitution, but reversion when made as a consequence of the servant not being found fit for the higher job, would not offend the provisions

(12) 1964 P.L.R. 344.

> of Article 311(2) of the Constitution, because in the latter contingency no punishment is being involved by reverting him because all officiating promotions are subject to a servant's fitness to hold the higher rank."

In that case Gurbax Singh, A.S.I., was reverted to his substantive rank from the officiating rank of Sub-Inspector of Police on the basis of an adverse confidential report. The name of Gurbax Singh was then removed from list 'E' which disentitled his being considered for promotion till his name could again be brought on that list. Mahajan, J., after discussing the facts of the case held:—

> "If both these documents are read together, and the further fact that the respondent's name has been removed from list 'E' and that this removal of the name disentitles the respondent for consideration for promotion to the rank of the Sub-Inspector (as per statement of Brij Mohan, P.W. 2) is considered, it will be evident that the order of reversion has been passed by way of punishment. This is the finding at which both the Courts below are in agreement and no fault can be found with the same."

With the above observation Mahajan, J., dismissed the appeal of the State of Punjab against the usual declaratory decree which had been granted by the trial Court and upheld by the first appellate Court in favour of Gurbax Singh.

Reliance has, however, been placed by Mr. M. S. Pannu, the learned Deputy Advocate-General, appearing for the State of Punjab on an unreported judgment of Falshaw, J., (as his Lordship then was), in Regular Second Appeal No. 443 of 1961, *Head Constable Jagir Singh* v. *The Punjab State*. It would be necessary to set out the facts of that case in some detail in order to appreciate the difference between *Jagir Singh's case* on one hand and *Wattan Singh's case* (*ibid*), on the other. Name of Jagir Singh, Head Constable, had been brought on list 'D' which entitled him to be considered for promotion to the post of an Assistant Sub-Inspector. He worked as officiating A.S.I. from

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April, 1951, till he was reverted to the rank of Head Constable with effect from 4th of July, 1955, on the basis of an adverse report regarding his efficiency. It was not disputed that the name of Jagir Singh was removed from list 'D' on the 3rd of June, 1957. Jagir Singh never impugned the order of his reversion which took effect from 4th of July, 1955. In September, 1957, Jagir Singh was given a chance to officiate as A.S.I. in the Intelligence Bureau at Delhi but was again reverted to the post of Head Constable on or about 15th of August, 1958. The record of that case does not show if Jagir Singh's name had been brought back on list 'D' at any time after the 3rd of June, 1957 or not. Nor does the judgment show if the name of Jagir Singh was ever removed from list 'D' subsequent to or in consequence of the order of reversion of August, 1958. In any case the removal of the name of Jagir Singh from list 'D' at any time after 3rd June, 1957, was not made a ground of attack in that case. The facts of that case appear to us to be like the facts of Regular Second Appeal No. 1413 of 1964, *Punjab State* v. *Naurang Singh*, in which case also we have pronounced judgment today allowing the appeal of the State and dismissing the suit of Naurang Singh.

On the above facts Falshaw, J., dismissed Jagir Singh's second appeal to this Court on 8th December, 1961, holding as follows:—

> "In my opinion reversion of an officer to his substantive rank from an officiating rank on grounds of inefficiency does not amount to punishment and does not fall within the scope of Article 311 of the Constitution."

The proposition of law enunciated by Falshaw, J., in the above passage is unexceptionable.

Falshaw, J. then proceeded to hold:—

> "I am also of the opinion that the lower appellate Court has taken a correct view in holding that the removal of his name from List 'D' does not amount to reduction in rank and in my opinion no officer can claim as of right to have his name on any such list."

There is no doubt that "removal of the name from list 'D' or list 'E' does not amount to reduction in rank." What

may or may not amount to reduction in rank is the reversion. Whether the order of reversion does or does not amount to reduction in rank would depend on the order casting a stigma on the official concerned or the order of reversion resulting in some penal consequence or not. It is in that context that Mehar Singh, J., held in *Wattan Singh's case* and Mahajan, J., held in *Gurbax Singh's case* on the facts of those cases, that the removal of the name from the promotion list indefinitely postponed the chances of promotion of the government servant concerned and, therefore, amounted to a penal consequence. To me it appears that Falshaw, J., did not lay down any law to the contrary. As pointed out above in *Jagir Singh's case,* which was being disposed of by Falshaw, J., no question of name being removed as a consequence of or even subsequent to the order of reversion ever arose.

While dealing with the judgment of the Calcutta High Court in *Dineshwar Bhattacharyya* v. *Chief Commercial Superintendent, Eastern Railway* (2), Falshaw, J., observed as follows:—

> "The learned Judge (of the Calcutta High Court) was of the opinion that while the reduction of the plaintiff to his substantive rank was not a punishment his removal from the panel did amount to punishment. I regret that I do not agree with this view since, as I have said I do not consider that any officer has any absolute right to have his name retained in such a list and the removal of a prospect of promotion is not reduction in rank."

It is submitted with respect that the language in which the judgment of the Calcutta High Court is couched, is somewhat involved. I am inclined to agree with each of the sentences of the judgment of Falshaw, J., quoted above. There is no doubt that no officer has any absolute right to have his name retained in a promotion list of the type prescribed by the Police Rules, i.e., list 'D' or list 'E'. It is equally correct that the removal of prospect of promotion is not itself reduction in rank. What is reduction in rank is the actual reversion resulting in the indefinite postponement of chances of future promotion of the government servant, if such a penal consequence ensues from the order of reversion itself. This is in consonance with the law settled by the Supreme Court in

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Purshotam Lal Dhingra's case. This is also the view of Mehar Singh, J., and Mahajan, J., in *Wattan Singh's case* and *Gurbax Singh's case.* Falshaw, J., does not seem to have expressed any contrary opinion in *Jagir Singh's case.* If Jagir Singh's case was before us we would also have dismissed the appeal of Jagir Singh in the light of what we are holding in this case. I, therefore, think that there is in fact no conflict between the pronouncements of this Court in *Jagir Singh's case* on the one hand and *Wattan Singh's case* on the other. The two judgments were bound to be different in view of the materially different facts and circumstances of the two cases.

If, however, the judgment of this court (Falshaw, J.), in *Jagir Singh's case* is ever sought to be interpreted by the State, as was attempted by the learned Deputy Advocate-General before us, to mean that reversion resulting in removal of the government servant's name from the promotion list and thus affecting him prejudicially in the matter of his chances of promotion from the substantive rank does not amount to reduction in rank, we respectfully differ from that view.

No hard and fast rule to govern all such cases can possibly be laid down. Mahajan, J., who had decided against the State in *Gurbax Singh's case,* dismissed Regular Second Appeal No. 1460 of 1961, filed by Head Constable Baij Nath against the decree of the lower appellate Court dismissing his suit impugning his reversion from the rank of A.S.I., to that of Head Constable, holding as follows:—

> "The plaintiff had no right to the post of Assistant Sub-Inspector. He was merely officiating as such and as he was found unsuitable, he was reverted and directed to mend his ways. There can be no manner of doubt that if he improves, the order reverting him would not stand in his way of promotion. Therefore, the order of reversion, in these circumstances, cannot be said to have been passed by way of punishment."

It has already been settled by this Court (Mahajan and Dua, JJ.) in Civil Writ No. 941 of 1962, *Ajit Singh* v. *The State of Punjab,* that reversion, which is effected purely because of a government servant's unsuitability to

hold the higher post cannot by itself amount to reduction in rank within the meaning of Article 311(2) of the Constitution unless it is by way of punishment. After considering the facts of that case the Division Bench of this Court (Mahajan and Dua, JJ.) held that no ground had been made for holding that the reversion of the petitioner in that case was by way of punishment and that their Lordships found that the reversion in that case was purely because of unsuitability of Ajit Singh to hold the higher post.

Reliance was also placed before us on the judgment of the Supreme Court in *J. S. Ramaswami* v. *Inspector-General of Police,* Civil Appeals Nos. 972 to 977 of 1963, decided on 21st January, 1964, wherein the Supreme Court took the view that a government servant had no right to have his name retained or put on the list. But that was not a case of reversion or of the name of the government servant being removed from the promotion list as a consequence of the reversion. The decision in that case does not, therefore, help us to decide these cases beyond holding that no government servant has a right to have his name brought on or retained on a promotion list.

Reliance was also placed on the judgment of Shamsher Bahadur, J., in *V. P. Rehbar* v. *Punjab State* (13) and *Raj Kumar Goel, etc.* v. *State of Punjab etc.* (14) wherein the learned Judge held that mere asking of explanations and serving of warnings on an officer on probation even though they imply some sort of inquiry would not result in giving to the order of termination the character of dismissal as an order of discharge from service in those circumstances would be without any element of punishment and would not, therefore, entitle the government servant to invoke Article 311(2) of the Constitution. There is no doubt that any inquiry for determining the fitness of a probationer for eventual substantive appointment to that post would not convert a consequent order of termination of his probation into that of punishment and would not entitle the probationer to claim protection of Article 311 (2) of the Constitution.

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(13) A.I.R. 1965 Punj. 94.

(14) I.L.R. (1965)2 Punj. 642=A.I.R. 1965 Punj 162.

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I think that the following propositions emerge out of the above discussion of the relevant cases and I would hold accordingly:—

1. that the fact that an Assistant Sub-Inspector's name is in List 'E' does not give any right to such an Assistant Sub-Inspector to be promoted to the rank of a Sub-Inspector. In other words we have held that merely because an Assistant Sub-Inspector's name is included in List 'E', he cannot claim promotion to the higher rank as a matter of right;

2. that any Assistant Sub-Inspector whose name is borne on the eligibility list (List 'E' under the Punjab Police Rules) and who is actually promoted to the higher rank on account of being borne on such a list either on a temporary or officiating basis or as a probationer, does not thereby get an indefeasible right not to be reverted to his substantive rank under any circumstances whatsoever without compliance with the provisions of Article 311(2) of the Constitution. Such a Sub-Inspector can be reverted to his substantive lower rank either as a mere administrative measure or on account of the exigencies of service or if it is found that he is not efficient or suitable to continue to work in the higher rank. It would not be necessary for the State in any of these cases to have resort to the provisions of Article 311(2) of the Constitution;

3. that if such an Assistant Sub-Inspector of Police who is officiating as a Sub-Inspector or is working as a probationer in such higher rank is reverted to his substantive rank by way of punishment he would be entitled to the protection of Article 311(2) of the Constitution and any order reverting him by way of punishment without compliance with the said constitutional provision would be liable to be struck down;

4. that even if the order of reversion in the case referred to in item 3 above is wholly innocuous and is not passed by way of punishment but either as a necessary consequence of the order of reversion or in pursuance of it some penal

consequences ensue to the incumbent of the higher post, the provisions of Article 311(2) of the Constitution would be attracted; and

5. that if on the reversion of a Sub-Inspector of Police to his substantive rank, it is further ordered as a consequence of the reversion that his name should also be removed from list 'E' or is actually so removed because of the reversion thus either debarring him from future promotion or indefinitely postponing his chances of future promotion, the case would be hit by Article 311 (2) of the Constitution as the reversion would in such a case result in penal consequences.

Having settled the legal propositions I would now proceed to deal with each of the two cases before us individually. In Rajinder Singh's case, R.S.A. 992 of 1963, both the Courts below have recorded a finding of fact that it was as a consequence of the reversion of Rajinder Singh that his name was removed from list 'E'. I have already held that the removal of name from list 'E' is a penal consequence in so far as it indefinitely postpones the chances of promotion of the Assistant Sub-Inspector. This penal consequence ensues to Rajinder Singh in his capacity as Assistant Sub-Inspector, i.e., in his substantive rank and not in relation to the higher rank. A mere reference to the Police Rules already quoted in an earlier part of this judgment shows that it is made necessary by those statutory rules that the matter of promotion has to be governed and regulated by the rules contained in Chapter 13 thereof. Lists 'D' and 'E' are also maintained as required by those rules. The plea of the Government that Rajinder Singh's name was in fact never borne on list 'E' has been found to be false and we concur with that finding. A reading of the rules makes it clear that no A.S.I. can be considered for promotion to the rank of a Sub-Inspector and no Head Constable can be considered for promotion to the rank of an A.S.I. unless the name of the relevant Government Officer is borne on list 'E' or list 'D', as the case may be. It cannot, therefore, be denied that the minimum result of removal of the name of an official from the relevant promotion list is to indefinitely postpone his chances of promotion from his substantive rank to the higher rank. On the facts and circumstances of Rajinder Singh's case we

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hold that the finding of the trial Court that even otherwise his reversion was by way of punishment is correct. On applying the tests which we have laid down above we hold that the claim of Rajinder Singh had been rightly decreed by the Courts below and there is no merit in the appeal of the State on this point. I am not able to sustain the finding of the Court below in this case holding that the reversion of Rajinder Singh to his substantive rank of A.S.I. could only be ordered by the Inspector-General of Police and not by the Deputy Inspector-General of Police. The reasoning of the lower appellate Court that though the Senior Superintendent of Police could revert him but the Deputy Inspector-General of Police could not, as at the time of his appointment there was no such post as that of Deputy Inspector-General of Police appears to me to be wholly fallacious. In view, however, of my finding that Article 311(2) has been violated in this case, it is not necessary to pursue this matter any further. Regular Second Appeal No. 992 of 1963, therefore, fails and is dismissed with costs.

Coming to the individual case of Bishan Dass (R.S.A. 341 of 1962) it may be mentioned that Mr. Bhandari, the learned counsel for the appellant urged two grounds in support of his appeal against the dismissal of his client's suit by the Courts below. He urged that in the circumstances of this case, the reversion of Bishan Dass to the post of Head Constable was by way of punishment and that in any case the removal of his name from list 'D' as a consequence of his reversion visited him with penal consequences of reversion and was, therefore, hit by Article 311(2) of the Constitution. Mr. M. S. Pannu, the learned Deputy Advocate-General appearing for the State, urged that there was no such plea in the plaint of Bishan Dass and that, therefore, none of these two points should be allowed to be urged before us at this stage. This objection of Mr. Pannu, however, appears to be misconceived. For facility of reference paragraphs 6 and 7(d) of the plaint are quoted below:—

> "6. That this order of reduction in rank regarding the plaintiff was passed as a measure of punishment which was inflicted on him due to certain remarks against him in the said 'C' Report."
>
> "7. * * * * *.

(d) That the orders of reversion are penal in character as it is founded on allegation of misconduct and also seniority and future rights of promotion of the plaintiff have been seriously affected."

A mere reading of these two paragraphs of the plaint shows that a specific plea which is now sought to be urged before us had been taken up by Bishan Dass in this suit right from the beginning.

It was next contended by the learned Deputy Advocate-General that the onus of proof of the issue impugning the order of his reversion was on the plaintiff and that in deciding the case we should see whether the plaintiff has strictly discharged that burden or not. It is settled law that when evidence has already been led by both sides the mere question of onus at the appellate stage more so at the second appellate stage is hardly material. No presumption in favour of the State can be raised after the whole evidence has been led in the case. From a perusal of the replies to the interrogatories Nos. 6, 7 and 8 (reproduced above while giving the facts of the case) and a perusal of the evidence on record I would hold that the trial Court in this case was correct in upholding the contention of the plaintiff and that the reversion of Bishan Dass from the post of A.S.I. to that of Head Constable was in fact by way of punishment. The first appellate Court has clearly fallen in an error on account of the misreading of the reply to Interrogatory No. 7 in the circumstances which have already been discussed above. In deciding in each particular case whether the reversion of a government servant is by way of punishment or not the Court has to keep in view the context and circumstances of the case leading to reversion and the consequences directly flowing from reversion in so far as they affect the substantive rank of the government servant and not *qua* the higher rank which he was holding in an officiating capacity or as a probationer. The loss of emoluments of the higher post and being reverted to the lower post are not penal consequences as they have reference to the higher post and not to the substantive post. Though the motive of reversion is not relevant, the actual effect of the order of reversion is material for deciding whether in each particular case it amounts to reduction in rank or not.

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On a consideration of the facts and circumstances of this case, I would agree with the observation of Harbans Singh, J., in the order of reference that the plea of Bishan Dass, appellant, to the effect that it was as a consequence of the order of reversion that his name was removed from the promotion list 'D' is correct and that this appeal must be decided on that basis.

In view of what has been stated above, Regular Second Appeal No. 341 of 1962 must succeed and is accordingly accepted. The judgment and decree of the first appellate Court is set aside and for the same is substituted the judgment and decree of the trial Court with costs throughout.

Duaj, J.

INDER DEV DUA, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before I. D. Dua and R. S. Narula, J.J.

MESSRS DALMIA DADRI CEMENT LTD.,—*Petitioner*

versus

PUNJAB STATE AND OTHERS,—*Respondents*

Civil writ No. 2578 of 1964

1965

May 24th.

Industrial Disputes Act (XIV of 1947)—S. 10—Notification making a reference to Industrial Tribunal—Whether can be amended by adding more names of workmen—General Clauses Act (I of 1898)—S. 21.—Whether applicable—Second notification not expressed to be issued in the name of Governor—Whether valid.

Held, that it will depend on the nature of the amendment to decide as to whether it should be allowed or not and the power of amendment etc., given by section 21 of the General Clauses Act cannot be so used as to nullify or render ineffective the other provisions of the Industrial Disputes Act, 1947. The provisions of section 21 of the General Clauses Act contain only a rule of construction and it is neither possible nor proper to lay down definitely the circumstances in which it is open to the State Government to amend or not to amend any clerical or other errors in the original notification issued under section 10(1) of the Act.