1954

The Rajahmundry Electric Supply Corporation Ltd. v. *The State of Andhra.*

Das J.

Province for any purpose connected with a matter with respect to which the Federal Legislature had power to make laws, require the Province to acquire the land on behalf and at the expense of the Federation. If power inhered in the Federal Legislature to make a law for the acquisition of any property for any purpose connected with a matter with respect to which it had power to make laws then section 127 would not have been necessary at all. The absence of any entry empowering any Legislature to make laws with respect to compulsory acquisition of a commercial or industrial undertaking and the provisions of section 127 to which reference has just been made make it abundantly clear that the contentions urged by the learned Advocate-General cannot possibly be sustained. In our opinion, therefore, it must be held that the Madras Legislature had no legislative competency to enact the impugned law. This is sufficient to dispose of this appeal and it is not necessary to express any opinion on the other points raised in the court below.

The result, therefore, is that this appeal must be allowed with costs both in the High Court as well as in this court.

Appeal allowed.

Agent for the appellant : *M. S. K. Aiyangar.*

Agent for the respondent : *R. H. Dhebar.*

Agent for the intervener : *R. H. Dhebar.*

1954

February 11.

THE STATE OF BIHAR

v.

ABDUL MAJID

[MEHR CHAND MAHAJAN C. J., MUKHERJEA, S. R. DAS, VIVIAN BOSE and GHULAM HASAN JJ.]

Civil servant—Wrongful dismissal—Suit for recovery of arrears of salary—Whether competent—Rule of English law—Civil servant—Holding office at the pleasure of Crown—Whether applicable in India.

Held, that the rule of English law that a civil servant cannot maintain a suit against the State or against the Crown for the

recovery of arrears of salary does not prevail in India and it has been negatived by the provisions of the statute law in India.

Section 240 of the Government of India Act, 1935, places restrictions and limitations on the exercise of *the pleasure of the Crown* and these restrictions must be given effect to. They are imperative and mandatory. Therefore whenever there is a breach of restrictions imposed by the statute by the Government or the Crown the matter is justiciable and *the aggrieved party* is entitled to suitable relief at the hands of the court. Government servants are entitled to relief like any other person under the ordinary law, and that relief must be regulated by the Code of Civil Procedure.

Punjab Province v. *Pandit Tara Chand* ([1947] F.C.R. 89) approved.

High Commissioner for India and Pakistan v. *I.M. Lall* ([1948] L.R. 75 I.A. 225) distinguished.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 70 of 1952.

Appeal by special leave from the Judgment and Decree dated the 5th May, 1949, of the High Court of Judicature at Patna (Manohar Lall and Mahabir Prasad JJ.) in Appeal from Appellate Decree No. 2091 of 1946.

C. K. Daphtary, Solicitor-General for India (*G. N. Joshi* and *Porus A. Mehta,* with him) for the appellant.

S. P. Sinha (*Nuruddin Ahmed,* with him) for the respondent.

1954. February 11. The Judgment of the Court was delivered by

MAHAJAN C.J.—This is an appeal by the State of Bihar against the judgment of the High Court of Judicature at Patna whereby the High Court passed a decree for arrears of salary of the respondent against the State from the 30th July, 1940, up to the date of the institution of the suit.

The undisputed facts of the case are: That the respondent was appointed a Sub-Inspector of Police by the Inspector-General of Police, Bihar and Orissa, in January, 1920. In the year 1937 departmental proceedings were taken against him and he was found guilty of cowardice and of not preparing search lists and was punished by demotion for ten years. On appeal, the Deputy Inspector-General of Police held

1954

The State of Bihar
v.
Abdul Majid.

Mahajan C. J.

that the respondent was guilty of cowardice but acquitted him of the other charge. By an order dated the 23rd July, 1940, which was communicated to the respondent on the 29th of July, 1940, the Deputy Inspector-General of Police having found him guilty of cowardice made an order dismissing him from service. Further appeals by the respondent to the Inspector-General of Police and to the Governor of Bihar were unsuccessful.

Aggrieved by the departmental action taken against him, the respondent filed the suit out of which this appeal arises in the court of additional subordinate judge against the State of Bihar for a declaration that the order of the Deputy Inspector-General of Police dismissing him from service was illegal and void and that he should be regarded as continuing in office. He also claimed a sum of Rs. 4,241 from 30th July, 1940, to the date of the suit on account of arrears of salary. The State contested the claim and pleaded that the plaintiff held his service at the pleasure of the Crown, and could not call in question the grounds or the reasons which led to his dismissal, and that in any case he had been reinstated in service from the 30th of July, 1940, and the order of dismissal therefore was no longer operative, and the suit had thus become infructuous. The additional subordinate judge by his judgment dated the 2nd February, 1945, dismissed the suit on the finding that the Government having reinstated the respondent he had no cause of action. As regards the arrears of salary, it was held that the claim to it could only be made according to the procedure prescribed under rule 95 of section 4 of Chapter IV of Bihar and Orissa Service Code. This decision was confirmed in appeal by the additional district judge. On further appeal the High Court reversed these decisions and decreed the claim for arrears of salary in the sum of Rs. 3,099-12-0. It was held that rule 95 of the Bihar and Orissa Service Code had no application because the respondent had never been dismissed within the meaning of that rule. It was further held that the plaintiff was entitled to maintain the suit for arrears of pay in view of the decision

of the Federal Court in *Tara Chand Pandit's* case(1) the correctness of which was not affected by decisions of the Privy Council in cases of *I. M. Lall*(2) and *Suraj Narain Anand*(3).

The principal questions involved in this appeal are :

(1) Whether the High Court correctly held that rule 95 abovementioned had no application to the case ?

(2) Whether a suit for arrears of salary by a civil servant is competent in a civil court ?

Rule 95 of the Bihar and Orissa Service Code provides :

Rule 95 "When the suspension of a Government servant as a penalty for misconduct is, upon reconsideration or appeal, held to have been unjustifiable or not wholly justifiable ; or when a Government servant who has been dismissed or removed, or suspended pending enquiry into alleged misconduct is reinstated ;

the revising or appellate authority may grant to him for the period of his absence from duty

(a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed, removed or suspended and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal, removal or suspension ; or

(b) if otherwise, such proportion of such pay and allowances as the revising or appellate authority may direct."

The provisions of this rule enable an appellate or revising authority, when making an order of reinstatement to grant the reliefs mentioned in the rule. Obviously these provisions have no application to the situation that arose in the present case. The respondent here was dismissed by the Deputy Inspector-General of Police, though he was appointed by the Inspector-General of Police. This was clearly contrary to the

(1) [1947] F. C. R. 89.
(2) 75 I.A. 225.
(3) 75 I.A. 343.

1954

The State of Bihar v. *Abdul Majid.*

Mahajan C. J.

provisions of section 240 (3) of the Government of India Act, 1935, which provides that no person shall be dismissed from the service of His Majesty by an authority subordinate to that by which he was appointed. But nevertheless the appeal preferred by him to the Inspector-General of Police was rejected and his petition to the Government of the State met with the same fate, so that he was never reinstated by the order of any revising or appellate authority. It was only after the present suit was filed that the Government reinstated him. This was no proceeding in revision or appeal. In these circumstances the enabling provisions of rule 95 had no application whatsoever to the case of the plaintiff. What happened subsequently is a matter wholly outside the contemplation of the rule. After the institution of the suit, the Chief Secretary to the Government of Bihar realising the untenability of the Government's position wrote to the Inspector-General of Police that the order of dismissal should be treated as null and void and that the respondent should be reinstated. Thus the reinstatement of the plaintiff the telegram of the 30th December, 1943, was not made at the instance of any of the authorities mentioned in the rule in exercise of their jurisdiction, appellate or revisional, but was made at the instance of the defendant in the suit who had realised that it was not possible to defend the order of dismissal. For the reasons given above we are of the opinion that the High Court was right in holding that rule 95 had no application to the facts and circumstances of this case and that the enabling provisions of this rule did not operate as a bar to the plaintiff's action.

The next contention of the learned Solicitor-General that a suit by a public servant against the State for recovery of arrears of salary cannot be maintained in a civil court is again, in our opinion, without substance. We think that the matter is covered by the decision of the Federal Court in *Tara Chand Pandit's* case(1) with which we find ourselves in respectful agreement. In that case the learned Attorney-General had argued with great force all the points that were

(1) [1947] F.C.R. 89.

urged in this appeal before us by the learned Solicitor-General and were dealt with by the Federal Court in great detail. It was there held that the prerogative right of the Crown to dismiss its servants at will having been given statutory form in sub-section (1) of section 240 of the Government of India Act, 1935, it could only be exercised subject to the limitations imposed by the remaining sub-sections of that section and that it must follow as a necessary consequence that if any of those limitations was contravened the public servant concerned had a right to maintain an action against the Crown for appropriate relief and that there was no warrant for the proposition that that relief must be limited to a declaration and should not go beyond it. It was further held that even if apart from the prerogative of the Crown to terminate the service of any of its servant at will, the further prerogative could be invoked that no servant of the Crown could maintain an action against the Crown to recover arrears of pay even after the pay had been earned and had become due and that the prerogatives of the Crown had been preserved in the case of India by section 2 of the Constitution Act, it must be presumed that this further prerogative had been abandoned in the case of India by the provisions of the Code of Civil Procedure and that it was not possible to subscribe to the proposition that while a creditor of a servant of the Crown was entitled as of right to compel the Crown to pay to him a substantial portion of the salary of such servant in satisfaction of a decree obtained against him the servant himself had no such right. Mr. Justice Kania, as he then was, in a separate but concurring judgment, negatived the contention of the Attorney-General in these terms :

"The question whether the law in England and India is the same on this point should be further considered having regard particularly to the provisions found in the Civil Procedure Code. In this connection, section 60(1) and clauses (i) and (j) of the proviso, and explanation (2) should be noted. Under section 60 all property belonging to the judgment debtor is liable to be attached. In stating the

1954

The State of Bihar v. *Abdul Majid.*

Mahajan C. J.

particulars of what may not be attached and sold, exemption to a limited extent is given in respect of the salary of a public servant. These provisions of the Code of Civil Procedure were not noticed in *Lucas* v. *Lucas and High Commissioner for India*(1), as the application was made in England and the Civil Procedure Code of 1908 did not apply there. The provisions of section 60 of the Civil Procedure Code give a right to the creditor to attach the salary of a servant of the Crown. There can be no dispute about that. If the contention of the appellant was accepted, the result will be that while the civil servant cannot recover the money in a suit against the Crown, his creditor can recover the same in execution of a decree against the civil servant. This right of the creditor to receive money in that manner has been recognised in innumerable decisions of all High Courts. There were similar provisions in the Civil Procedure Code of 1882 also. By reason of section 292 of the Constitution Act, the Code of Civil Procedure, 1908, continues in force, in spite of the repeal of the Government of India Act of 1915. Could the Imperial Parliament in enacting section 240 and being deemed aware of the provisions of section 60 of the Civil Procedure Code, have thought it proper to give this privilege to a creditor, while denying it to the officer himself ? To hold so, the words of section 240 of the Constitution Act will have to be unduly and unnaturally strained. Moreover in explanation (2) of section 60 the word 'salary' is defined. In the proviso to section 60 clause (i) the word 'salary' is used as applicable to private employees and to Government servants also. The word 'salary' in respect of a private employee must mean an enforceable right to receive the periodical payments mentioned in the explanation. In that connection it is not used in the sense of a bounty. It will therefore be improper to give the same word, when used with regard to a civil servant under the Crown a diffierent meaning in the same clause. It seems to me therefore that the Imperial Parliament has not accepted the principle that the Crown is not liable to pay its servant salary

(1) (1943) P. 68.

for the period he was in service, as applicable to British India or as forming part of the doctrine that service under the Crown is at His Majesty's pleasure."

The learned Solicitor-General contended that the decision in *Tara Chand Pandit's* case(1), was no longer good law and should be deemed to have been dissented from and overruled by the decision of their Lordships of the Privy Council in *I. M. Lall's* case(2), and that in any event the view expressed in that decision should be preferred to the view expressed in *Tara Chand Pandit's* case. We are unable to uphold this contention. It seems that during the arguments in *Lall's* case attention of their Lordships was not drawn to the decision of the Federal Court in *Tara Chand Pandit's* case because the point was not directly involved therein. In that case no claim had been made by the plaintiff for arrears of his pay. The plaintiff had sued for a declaration simpliciter that the order of his removal from the office was illegal and that he was still a member of the Indian Civil Service. The High Court granted that declaration. The Federal Court, on appeal, substituted for the declaration made by the High Court a declaration that the plaintiff had been wrongfully dismissed. The case was remitted to the High Court with a direction to take such action as it thought necessary in regard to any application by the plaintiff for leave to amend the claim for recovery of damages. On appeal to the Privy Council the decree and the order made by the Federal Court was modified and their Lordships held that in their opinion the declaration should be varied so as to declare that the purported dismissal of the respondent on the 10th August, 1940, was void and inoperative and the respondent remained a member of the Indian Civil Service at the date of the institution of the suit, 20th of June, 1942. The High Commissioner for India had also appealed against the order of the Federal Court remitting the case to the High Court for amendment of the plaint. The plaintiff did not want to maintain the order of the Federal Court to remit, before the

(1) [1947] F.C.R. 89.
(2) 75 I.A. 225.

1954

The State of Bihar v. *Abdul Majid.*

Mahajan C. J.

Privy Council. He however urged that he was entitled to recover in the suit his arrears of pay from the date of the purported order of dismissal up to the date of action, though this was not one of the reliefs claimed by him in the suit at all. This relief that was claimed by him before the Board was negatived by their Lordships on the ground that no action in tort could lie against the Crown and that such an action must either be based on contract or conferred by statute. Their Lordships approved of the judgment of Lord Blackburn in the Scottish case of *Mulvenna* v. *The Admiralty*(1), in which that learned Judge laid down the rule in the following terms after reviewing various authorities :

"These authorities deal only with the power of the Crown to dismiss a public servant, but they appear to me to establish conclusively certain important points. The first is that the terms of service of a public servant are subject to certain qualifications dictated by public policy, no matter to what service the servant may belong, whether it be naval, military or civil, and no matter what position he holds in the service, whether exalted or humble. It is enough that the servant is a public servant, and that public policy, no matter on what ground it is based, demands the qualification. The next is that these qualifications are to be implied in the engagement of a public servant, no matter whether they have been referred to when the engagement was made or not. If these conclusions are justified by the authorities to which I have referred, then it would seem to follow that the rule based on public policy which has been enforced against military servants of the Crown, and which prevents such servants suing the Crown for their pay on the assumption that their only claim is on the bounty of the Crown and not for a contractual debt, must equally apply to every public servant. It also follows that this qualification must be read, as an implied condition, into every contract between the Crown and a public servant, with the effect that, in terms of their contract, they have no right to their remuneration which can be

(1) [1926] S. C. 842.

enforced in a civil court of justice, and that their only remedy under their contract lies 'in an appeal of an official or political kind'."

The observations made in *Mulvenna* v. *The Admiralty*(1), which is a Scottish case, could not have been made if in the law of that country there were provisions similar to the provisions made in various sections of the Code of Civil Procedure referred to by the Federal Court in *Tara Chand Pandit's* case(2). It was further urged that the same view was taken by Pilcher J. in *Lucas* v. *Lucas and the High Commissioner for India*(3). There the question for consideration was whether the sterling overseas pay of an Indian civil servant was a debt owing and accruing within the meaning of rule 1 of Order XLV of the Rules of the Supreme Court and which could be attached in satisfaction of an order for the payment of alimony. The real point for decision in that case was whether the whole or any portion of the salary of a member of the Indian Civil Service was liable to attachment in England in satisfaction of the judgment debt. It appears that the attention of the learned Judge was not invited to the provisions of section 60 and other relevant provisions of the Code of Civil Procedure and the learned Judge applied the dictum of Lord Blackburn in *Mulvenna* v. *The Admiralty*(1), to the case of a civil servant from India. As the application was made in England and the Civil Procedure Code did not apply there, the provisions of the Code were not noticed in that case. We are therefore of the opinion that the rule laid down by their Lordships of the Privy Council in *I. M. Lall's* case(4), without a consideration of the provisions of the Code of Civil Procedure relevant to the inquiry and without a consideration of the reasoning of the Federal Court in *Tara Chand Pandit's* case(2), cannot be treated, particularly because the matter was not directly involved in the suit, as the final word on the subject. We are in no way bound by the decision given either in *Tara Chand Pandit's* case(2), or by the

(1) [1926] S. C. 842.
(2) [1947] F.C.R. 89.
(3) [1943] P. 68.
(4) 75 I.A. 225.

1954

The State of Bihar v. *Abdul Majid.*

Mahajan C. J.

decision given by the Privy Council in *I. M. Lall's* case(1). But on a consideration of the reasons given in the two judgments we think that the rule of English law that a civil servant cannot maintain a suit against the State or against the Crown for the recovery of arrears of salary does not prevail in this country and that it has been negatived by the provisions of the statute law in India.

Reliance was also placed by the learned Solicitor-General on the decision of the Federal Court in *Suraj Narain Anand* v. *North West Frontier Province*(2). In that case Suraj Narain having been appointed a Sub-Inspector of Police posted in the North West Frontier Province by the Inspector-General of Police of the Province was subsequently dismissed by the Deputy Inspector-General of Police. Failing to get relief by departmental proceedings he instituted a suit in the Court of the Senior Subordinate Judge, Peshawar. The subordinate judge dismissed the suit as being unsustainable. This decision was upheld by the Court of the Judicial Commissioner. The Federal Court held that the Courts below were not justified in dismissing the suit, that the plaintiff was at least entitled to a declaration that the order of dismissal passed against him was void. That court accordingly set aside the decree of the Judicial Commissioner and remitted the case with a declaration that there shall be substituted for the decree appealed against a declaration in the terms above stated, with such further directions as the circumstances of the case may require in the light of the observations of their judgment. The Province appealed to the Privy Council against the decision of the Federal Court. It was held by the Board in the first instance allowing the appeal of the North West Frontier Province and reversing the decision of the Federal Court of India, that the North West Frontier Province Police Rules, 1937, had become operative in 1938 at some date before April 25, 1938, when the respondent was dismissed, and that rule 16 (1) was a valid rule made under the authority conferred on the

(1) 75 I.A. 225.

(2) [1941] F.C.R. 37.

appellant by section 243 of the Government of India Act, 1935, and that the respondent's suit was rightly dismissed, but subsequently on the petition of the respondent asking the Board to reconsider their decision on the ground that it had been ascertained that the Police Rules of 1937 were in fact printed and published on April 29, 1938, that was, four days after the date of his dismissal, the Board heard the appeal further, when the respondent's allegation was admitted and, applying the reasoning in their previously delivered judgment, the Board reversed their former decision and affirmed the judgment of the Federal Court which had held that the respondent's dismissal was void and inoperative. During the arguments before the Privy Council reference was made to section 60 of the Code of Civil Procedure and to the decision of the Federal Court in *Tara Chand Pandit's* case(1), and it was also noticed that following on the remit of the case to the Judicial Commissioner by the order of the Federal Court, dated December 4, 1941, the respondent had obtained a decree for payment of Rs. 2,283 against the appellant in respect of arrears of pay from the date of dismissal to the institution of the suit. When the appeal came before the Board for further hearing their Lordships on the 6th August, 1948, caused a letter to be addressed to the solicitor representing the appellant, informing him that their Lordships now proposed humbly to advise His Majesty that the appeal should be dismissed, and stating that the order as to costs would not be varied. The letter pointed out that if this advice were tendered, and if His Majesty were pleased to accept it, the effect would be that the declaratory judgment of the Federal Court would stand. Finally, the letter referred to the award of Rs. 2,283 to the respondent by the Court of the Judicial Commissioner which, according to a submission made by the appellant's counsel, was open to challenge, and inquired whether the appellant wished to have an opportunity of satisfying their Lordships that the point was open, and of being heard on it. By their Lordships' direction a copy of this letter was sent to the respondent.

(1) [1947] F.C.R. 89.

1954

The State of Bihar v. *Abdul Majid.*

Mahajan C. J.

An intimation was received by the Privy Council that the appellant did not wish to offer any further arguments on the case. The respondent also did not desire an opportunity of arguing that he should now be awarded arrears of pay from the date of the institution of the suit onwards. In these circumstances the Board refused to deal further with the matter and advised His Majesty that the declaratory judgment of the Federal Court be restored and proceeded to observe that it would be open to the respondent to pursue any remedy which flows from that declaratory judgment in an appropriate court. Their Lordships concluded the judgment with the following observations :—

"Their Lordships must not be understood, however, as expressing an opinion that the respondent was entitled as of right to recover the sum of Rs. 2,283 which was awarded to him, or that he has any claim to a further sum in respect of arrears of pay. It is unnecessary, owing to the very proper attitude of the appellant, to express any view as to the former question, and the latter question does not arise in this appeal which is from the decision of the Federal Court. If that decision is affirmed the respondent who did not himself enter an appeal, cannot now ask for anything more."

It is thus clear that in express terms in this decision their Lordships declined to give any opinion on the question whether the respondent was entitled as of right to recover arrears of pay awarded to him by the Judicial Commissioner, in spite of the circumstance that their attention had been drawn to the decision of the Federal Court in *Tara Chand Pandit's* case(1). This decision therefore cannot be said to support the view contended for by the learned Solicitor-General. On the other hand, it must be assumed that in spite of their decision in *I. M. Lall's* case(2), their Lordships in this case, the judgment in which was delivered subsequent to the decision in *I. M. Lall's* case(2), on November 4, 1948, did not reaffirm the proposition

(1) [1947] F.C.R. 89.

(2) 75 I.A. 225.

laid down in that case but preferred to express no opinion on the point.

It was suggested that the true view to take is that when the statute says that the office is to be held at pleasure, it means "at pleasure", and no rules or regulations can alter or modify that; nor can section 60 of the Code of Civil Procedure, enacted by a subordinate legislature be used to construe an Act of a superior legislature. It was further suggested that some meaning must be given to the words "holds office during His Majesty's pleasure" as these words cannot be ignored and that they bear the meaning given to them by the Privy Council in *I. M. Lall's* case (1).

In our judgment, these suggestions are based on a misconception of the scope of this expression. The expression concerns itself with the tenure of office of the civil servant and it is not implicit in it that a civil servant serves the Crown *ex grati* or that his salary is in the nature of a bounty. It has again no relation or connection with the question whether an action can be filed to recover arrears of salary against the Crown. The origin of the two rules is different and they operate on two different fields.

The rule that a civil servant holds office at the pleasure of the Crown has its origin in the latin phrase "*durante bene placito*" ("during pleasure") meaning that the tenure of office of a civil servant, except where it is otherwise provided by statute, can be terminated at any time without cause assigned. The true scope and effect of this expression is that even if a special contract has been made with the civil servant the Crown is not bound thereby. In other words, civil servants are liable to dismissal without notice and there is no right of action for wrongful dismissal, that is, that they cannot claim damages for premature termination of their services. [See Fraser's Constitutional Law, page 126; Chalmer's Constitutional Law, page 186; *Shenton* v. *Smith* (2); *Dunn* v. *The Queen*(3)].

This rule of English law has not been fully adopted in section 240. Section 240 itself places restrictions

(1) 75 I.A. 225. (2) [1895] A.C. 229, 234. (3) [1896] 1 Q.B. 116.

1954

The State of Bihar
v.
Abdul Majid.

Mahajan C. J.

and limitations on the exercise of that pleasure and those restrictions must be given effect to. They are imperative and mandatory. It follows therefore that whenever there is a breach of restrictions imposed by the statute by the Government or the Crown the matter is justiciable and the party aggrieved is entitled to suitable relief at the hands of the court. As pointed out earlier in this judgment, there is no warrant for the proposition that the relief must be limited to the declaration and cannot go beyond it. To the extent that the rule that Government servants hold office during pleasure has been departed from by the statute, the Government servants are entitled to relief like any other person under the ordinary law, and that relief therefore must be regulated by the Code of Civil Procedure.

Section 292 of the Government of India Act, 1935, provides that the law in force in British India immediately before the commencement of the Act shall continue in force until altered, repealed or amended by a competent legislature. Sections 100 to 104 of the Government of India Act, 1935, confer legislative powers on the different legislatures in the country. Item 4 of the concurrent list in the Seventh Schedule reads thus: "Civil Procedure, and all matters *included* in the Code of Civil Procedure, at the date of the passing of this Act." It is clear therefore that the Indian Legislatures were conferred by the Government of India Act, 1935, power to regulate the procedure in regard to actions against the Crown and to make provision for reliefs that could be granted in such actions. These provisions of the Government of India Act, 1935, stand by themselves independently of what is contained in section 240, and therefore no question arises that section 60 of the Code of Civil Procedure which has the sanction of the Government of India Act, 1935, itself is in status lower than the rule laid down in section 240.

The rules of English law that the Crown cannot be sued by a civil servant for money or salary or for compensation has its origin in the feudal theory that the Crown cannot be sued by its vassals or subjects in its

own courts. From this theory the common law lawyers in England deduced two rules, namely, (1) that the King can do no wrong, and (2) that as a matter of procedure no action can lie in the King's courts against the Crown. (See Ridge's Constitutional Law, eighth edition, page 295, and Fraser's Constitutional Law, page 164). The subject, in this situation, could only proceed by way of a petition of right which required the previous permission of the Crown. Permission was given by a *fiat justitia* issued by the Crown. It was not in practice refused to a petitioner who had any shadow of a claim, so that probably the disadvantages of this form of procedure were more theoretical that substantial. Petitions of right and various other special forms of English procedure applicable exclusively to actions by and against the Crown were abolished by the Crown Proceedings Act, 1947, which provides that in future claims against the Crown might be enforced as of right and without the fiat of His Majesty, and that they should be enforceable by ordinary procedure in accordance with the rules of the High Court or the County Court as the case might be. Arrears of salary were being actually recovered by the procedure of petition of right in England. [See *Bush* v. *R.* (1)]. There the judgment resulted in favour of the suppliant. The claim was in respect of the amount of salary due to him as Master of the Court of Queen's Bench in Ireland. (Robertson's Civil Proceedings by or against the Crown, page 338).

In India, from the earliest times, the mode of procedure to proceed against the Crown has been laid down in the Code of Civil Procedure and the procedure of petition of right was never adopted in this country, and the same seems to have been the rule in Australia and other Colonies. Section 56 of the Judiciary Act, 1903, relating to the Commonwealth of Australia provides :

"Any person making any claim against the Commonwealth, whether in contract or in tort, may in respect of the claim bring a suit against the

(1) [1869] Times News, May 29.

1954

The State of Bihar v. *Abdul Majid.*

Mahajan C. J.

Commonwealth in the High Court or in the Supreme Court of the State in which the claim arose."

Under the New South Wales Act, 39 Vict. No. 38, the Government of the Colony is liable to be sued in an action of tort as well as in contract. Section 65 of the Government of India Act, 1858, conferred the right of suit against the Government. It provided that "all persons and bodies politic shall and may have and take the same suits, remedies and proceedings legal and equitable, against the Secretary of State in Council of India as they could have done against the said company" (the East India Company). This was replaced by section 32 of the Government of India Act, 1915. Sub-section (2) of that section ran as follows :—

"Every person shall have the same remedies against the Secretary of State in Council as he might have had against the East India Company if the Government of India Act, 1858, and this Act had not been passed."

This was replaced by section 176(1) of the Government of India Act, 1935, which substantially reproduced these provisions. From these provisions it is clear that the Crown in India was liable to be sued in respect of acts, which in England could be enforced only by a petition of right. As regards torts of its servants in exercise of sovereign powers, the company was not, and the Crown in India was not, liable unless the act had been ordered or ratified by it. Be that as it may, that rule has no application to the case of arrears of salary earned by a public servant for the period that he was actually in office. The present claim is not based on tort but is based on *quantum meruit* or contract and the court is entitled to give relief to him. The Code of Civil Procedure from 1859 right up to 1908 has prescribed the procedure for all kinds of suits and section 60 and the provision of Order XXI substantially stand the same as they were in 1859 and those provisions have received recognition in all the Government of India Acts that have been passed since the year 1858. The salary of its civil servants in the

1954

The State of Bihar v. *Abdul Majid.*

Mahajan C. J.

hands of the Crown has been made subject to the writ of civil court. It can be seized in execution of a decree attached. It is thus difficult to see on what grounds the claim that the Crown cannot be sued for arrears of salary directly by the civil servant, though his creditor can take it, can be based or substained. What could be claimed in England by a petition of right can be claimed in this country by ordinary process.

For the reasons given above we are of the opinion that this appeal is without force and we accordingly dismiss it with costs.

Appeal dismissed.

Agent for the appellant : *R. H. Dhebar.*

Agent for the respondent : *S. P. Varma.*

MESSRS. DWARKA PRASAD LAXMI NARAIN

v.

THE STATE OF UTTAR PRADESH AND TWO OTHERS.

1954

January 11.

[MEHR CHAND MAHAJAN C. J., MUKHERJEA, VIVIAN BOSE, GHULAM HASAN and JAGANNADHADAS JJ.]

Constitution of India, Arts. 19(1) (g), 19 (6)—Clause 4(3) of the Uttar Pradesh Coal Control Order, 1953, whether ultra vires the Constitution.

A law or order which confers arbitrary and uncontrolled power upon the executive in the matter of regulating trade or business in normally available commodities must be held to be unreasonable. Under cl. 4(3) of the Uttar Pradesh Coal Control Order, 1953, the licensing authority has been given absolute power to grant or refuse to grant, renew or refuse to renew, suspend, revoke, cancel or modify any licence under this Order and the only thing he has to do is to record reasons for the action he takes. Not only so, the power could be exercised by any person to whom the State Coal Controller may choose to delegate the same, and the choice can be made in favour of any and every person. Such provisions cannot be held to be reasonable :

Held, therefore that the provision of cl. 4(3) of the Uttar Pradesh Coal Control Order, 1953, must be held to be void as