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Court which tries him could award for any one of such offences. The maximum sentence which could have been imposed upon the appellant for any one of the offences of which he had been convicted was one year's imprisonment. In other words, even if separate sentences were passed under s. 9, sub-ss. (a) and (b), the sum total of these sentences should not exceed one year's imprisonment. In the present case, the sentence imposed upon the appellant has been in all 6 months, 3 months' imprisonment under each count. It would appear, therefore, that the sentence passed upon the appellant did not contravene the provisions of s. 71 of the Indian Penal Code. In our opinion, the appellant was rightly convicted under s. 9 (a) and (b) of the Opium Act, and there has been no illegality in the sentence imposed upon him.

It was strongly urged on behalf of the appellant that there might be a reduction in the sentence. Instead of a sentence of imprisonment being imposed, the appellant may be sentenced to a substantial fine. In our opinion, offences against the Opium Act are serious ones, and we cannot accede to the request made. A sentence of 6 months' imprisonment cannot be considered as unduly severe.

The appeal is accordingly dismissed.

M. RAMAPPA

v.

SANGAPPA AND OTHERS

1958

August 21.

(VENKATARAMA AIYAR, GAJENDRAGADKAR and A. K. SARKAR JJ.)

Election Dispute—Disqualification for being chosen as member of State Assembly—Hereditary village office—Whether office of profit under the Government—Mysore Village Offices Act, 1908 (Mysore 4 of 1908), ss. 6, 7, 8—Representation of the People Act, 1951 (43 of 1951), s. 100(1)(c)—Constitution of India, Art. 191.

The nomination papers of three candidates for election as members of the State Assembly were rejected by the Returning

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Officer on the ground that the first two of them were Patels and the third, a Shanbhog, of their villages and as such they were holders of offices of profit under the Government and consequently disqualified from membership of the State Assembly under Art. 191 of the Constitution of India. The validity of the election was challenged by some of the electors of the constituency by an election petition under s. 100(1)(c) of the Representation of the People Act, 1951, on the ground that the nomination papers of the three candidates were wrongly rejected. It was contended for the petitioners that the candidates in question were not holders of offices of profit under the Government because (1) they were holding their offices by hereditary right and not under the Government, and (2) there was no direct payment of their dues by the Government. It was not disputed that village offices are governed by the Mysore Village Offices Act, 1908, and it was found that Patels and Shanbhogs were holding their offices by reason of the appointment by the Government, though in certain cases the statute gave the heir of the last holder a right to be appointed if the statutory requirements were fulfilled, that they worked under the control and supervision of the Government and were removable by it, and that their remuneration was paid by it out of its funds and assets :

Held, that the holder of a village office though he may have a hereditary right, does not get the office till he is appointed by the Government under whom the office is held. Accordingly, Patels and Shanbhogs are holders of offices of profit under the Government and their nomination papers were rightly rejected by the Returning Officer.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 251 of 1958.

Appeal from the judgment and order dated February 26, 1958, of the Mysore High Court in Misc. Appeal No. 142 of 1957.

R. Patnaik, for the appellant.

S. K. Venkatranga Iyengar and *N. Keshava Iyengar*, for the respondents.

1958. August 21. The Judgment of the Court was delivered by

Sarkar J.

SARKAR J.—The question for decision in this appeal is whether certain persons were holders of offices of profit under the Government and were therefore disqualified under Art. 191 of the Constitution, for being chosen as members of a legislative assembly. It

arises out of a petition presented under the Representation of the People Act, 1951, for a declaration that the election of the appellant was void.

The election with which the case is concerned, was held on March 8, 1957, for choosing members for the Mysore State Legislative Assembly. One of the constituencies for the purposes of election to that Assembly was known as Harihar. The nomination papers filed by three persons, namely, Hanumanthappa, Siddappa and Guru Rao for election from that constituency were rejected by the Returning Officer on the ground that the first two of them were Patels and the third a Shanbhog of certain villages in Mysore and as such they were all holders of offices of profit under the Mysore Government and consequently disqualified from membership of the Assembly under Art. 191. As a result of this rejection two candidates were left to contest the election and the appellant, who was one of them, was declared elected as he obtained the larger number of votes at the poll. Six electors of the Harihar constituency then filed the election petition for a declaration under s. 100(1)(c) of the Representation of the People Act, 1951, that the election of the appellant was void on the ground that the nomination papers of Hanumanthappa, Siddappa and Guru Rao had been improperly rejected. If the rejection was improper the petition would have to be allowed. The appellant was the sole respondent to that petition. It was alleged in the petition that Patels and Shanbhogs were hereditary village officers and therefore were not holders of offices of profit under the Government. It was said that they were really representatives of the village community, and only acted as agents of that community or as liaisons between it and the Government, and that in any event they were not holders of offices of profit because the amount of money receivable by them in respect of their offices was very small and out of all proportion to the work done by them. The petition was dismissed by the Election Tribunal by its order dated September 10, 1957. It held that the conditions of service of Patels and Shanbhogs were regulated by

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the Mysore Village Offices Act, 1908, and that the mere fact that offices of Patels and Shanbhogs were hereditary was not by itself sufficient to establish that they were not offices under the Government. It also held that Hanumanthappa, Siddappa and Guru Rao were in receipt of considerable remuneration and were, therefore, holding offices of profit. The six petitioners then appealed to the High Court of Mysore. The High Court by its judgment, dated February 26, 1958, allowed the appeal and held that the offices of Patels and Shanbhogs were not offices under the Government. The election of the appellant was thereupon declared void. It is from this judgment that the present appeal to this Court has been taken with a certificate granted under Art. 133(1)(c) of the Constitution. One of the six petitioners being dead, the remaining five are the respondents in this appeal.

There is no dispute that Hanumanthappa and Siddappa held the offices of Patels and as remuneration for their services lands had been allotted to them and provision for cash allowances made. Likewise it is not disputed that Guru Rao was a Shanbhog and had cash remuneration provided to him for his services. It is also clear and not challenged that Patels and Shanbhogs have specific duties to perform and are holders of offices. The only point for determination in this appeal is whether they are holders of offices under the Mysore Government.

The contention of the learned Advocate for the respondents is that Patels and Shanbhogs are not holders of offices under the Government. He said that their offices were recognised by the old customary law and devolved by hereditary succession. According to him under that law these offices were held under the village community and the officers acted as agents of that community to pay the revenue of the village to the authority entitled to it and formed the liaisons between that community and the authority. He contended that under the Mysore Land Revenue Code, 1888, the Government could appoint Patels and Shanbhogs only where there were no hereditary Patels and Shanbhogs. He said that as Hanumanthappa and

Siddappa were admittedly hereditary Patels and Guru Rao, a hereditary Shanbhog, they could not have been holding offices under the Government. He contended that the Mysore Village Offices Act was a consolidating Act and it did not alter the hereditary right to the offices but maintained the old law. According to him being hereditary, these offices were not held under the Government.

Village Offices are now governed by the Mysore Village Offices Act, 1908. The election petition proceeds on this basis and both the Courts below have so held and the contrary has indeed not been contended in this Court. The Act itself mentions the offices of Patels and Shanbhogs as "Village Offices" within it and puts the matter beyond all doubt. The Act, no doubt, recognises a hereditary right to village offices to some extent and a larger hereditary right to the offices is not claimed for Hanumanthappa, Siddappa or Guru Rao. A consideration of the customary law of the Madras Land Revenue Code is, therefore, unnecessary.

The question then is, what is the effect of the provisions of the Mysore Village Offices Act dealing with the hereditary right to the offices? First, there is s. 6 under which when two or more villages or portions thereof are grouped together or amalgamated to form a new village, or one village is divided into 2 or more villages, the old village offices cease to exist and new offices have to be created. In choosing persons to fill such new offices the Government has to select the best qualified from among the last holders of the offices which have ceased to exist or the members of their families. In these cases obviously no full hereditary right to the office is recognised, for the offices which have ceased to exist may have been held by members of different families. All that s. 6 says is that the new appointment shall be made from amongst these families. So it is possible under this section to appoint to an office a person who is not the heir of the last holder of the office abolished. The important section, however, for the purpose of a hereditary right to the

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office is s. 8 which provides for filling up a vacancy occurring in the office of a Patel or a Shanbhog. Sub-section (1) states that certain persons shall not be eligible for the office. It is there provided that a person who has not attained majority or does not possess requisite physical or mental capability, or the prescribed educational qualification, or has been convicted by a criminal court for an offence which, in the opinion of the prescribed officer, disqualifies him for holding the office, or has been adjudged by that officer after an enquiry as prescribed, to be of general bad character, shall not be eligible for appointment. Sub-section (2) provides that succession in the case of a permanent vacancy shall be regulated by the ordinary provisions of the personal law applicable to the last holder, provided that it shall devolve on a single heir and that where there are more persons than one who would under the ordinary provisions of that law be entitled to succeed to the last holder of the office, preference shall be given to the eldest member of the eldest branch among those persons. This would seem to create a right in the heir of the deceased holder of an office to succeed to him. This right, however, is not an absolute right for he cannot be appointed if he is not eligible under sub-s. (1) nor where the prescribed officer has declared under s. 7 (v) in dismissing any holder of office, that the dismissal would entail a forefeiture of the right of succession of all the undivided members of his family. This is all the hereditary right to an office that is provided by the Act.

Let us, however, ignore the restrictions on the hereditary right to the office mentioned in the Act and assume that the eldest heir in the eldest branch of the last holder of it, is entitled to succeed to the office when he vacates it. The question is, does this make the office one not under the Government? The learned Advocate for the respondent contended that it did and this contention has been accepted by the High Court. The learned Chief Justice in his judgment said " can the Government prevent him from succeeding to the permanent vacancy? Such a person gets to

that post not because he is appointed by the Government but by his own rights." He also supported his view by referring to *Mangal Sain* v. *State of Punjab* (1) where it had been held that the mere fact that the Government has under a statute a hand in the appointment and dismissal of the Executive Officer of a Municipality, does not make him its servant.

We think this view is untenable. It overlooks the fact that the heir of the last holder does not get the office till he is appointed to it by the Government. The statute, no doubt, gives him a right to be appointed by the Government in certain cases. None the less, it is the appointment by the Government that perfects his right to the office and makes him the officer; without such appointment he does not hold the office. The Government makes the appointment to the office though it may be that it has under the statute no option but to appoint the heir to the office if he has fulfilled the statutory requirements. The office is, therefore, held by reason of the appointment by the Government and not simply because of a hereditary right to it. The fact that the Government cannot refuse to make the appointment does not alter the situation.

If this were not so, the result would be curious. An office has to be held under someone for it is impossible to conceive of an office held under no one. The appointment being by the Government, the office to which it is made must be held under it, for there is no one else under whom it can be held. The learned Advocate said that the office was held under the village community. But such a thing is an impossibility for village communities have since a very long time, ceased to have any corporate existence. The case of *Mangal Sain* v. *The State of Punjab* (1) does not assist for there, there was the Municipality under which the office could be held though appointment to it was made by the Government.

The learned Advocate for the respondent contended that there are certain other sections of the Act which support his contention. First, we were referred to

(1) A.I.R. 1952 Punj. 58.

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s. 11 which gives a person entitled to an office under s. 8 of the Act a right to sue before the prescribed authority for it or for the recovery of its emoluments. We are unable to see that this section advances the matter further. It only shows that a person has a right to be appointed. That, however, as we have earlier stated, is not enough. The right alone does not make him the officer. He must actually be appointed to the office and upon such appointment he comes to hold it under the Government. We were also referred to s. 8, sub-s. (4) which provides that when the heir of the last holder of an office who would otherwise be entitled to succeed to it is a minor, the prescribed officer shall register him as a successor of the last holder and appoint some other qualified person to discharge the duties of the office during his minority. This provision is equally unhelpful. The minor is only registered as a successor and on attainment of majority or within three years thereafter if he is qualified under the Act, he can be appointed to the office. In the meantime he is not appointed to the office nor does he hold it. Here again it is only on appointment after attainment of majority that the erstwhile minor heir comes to hold the office. We, therefore, come to the conclusion that though there may be a hereditary right to hold an office, it is not held till an appointment to it is made by the Government and that there is no one except the Government under whom the office can be held.

We have so far dealt with the provisions of the Act concerning appointments. We will now turn to those dealing with dismissal from office and other forms of punishment. Section 7 of the Act gives the prescribed officer of the Government power to suspend, dismiss or remove any holder of a village office on any of the grounds mentioned in it. There is no other power of dismissal given by the Act. It is said that this shows that the office is not held under the Government for if it were so, the officer would be liable to dismissal at the pleasure of the Governor under Art. 310 of the Constitution. This argument was accepted by the High Court but it seems to us to lack in substance.

The argument assumes that because of s. 7 of the Act, the holder of a village office is not liable to be dismissed at the pleasure of the Governor. We think it unnecessary in this case to decide whether this assumption is justified or not and will proceed on the basis that it is the correct view of the position. But does it follow that because a village officer cannot be dismissed at the pleasure of the Governor, he does not hold office under the Government? It has been recognised that a statute may prevent an officer of the Government from being dismissed at its pleasure. That is what happened in *Gould* v. *Stuart* (1) referred to by the Judicial Committee in *R. Venkata Rao* v. *Secretary of State for India* (2). In *Gould* v. *Stuart* (supra) it was said, that "It is the law in New South Wales as well as in this country that in a contract for service under the Crown, civil as well as military, there is, except in certain cases where it is otherwise provided by law, imported into the contract a condition that the Crown has the power to dismiss at its pleasure: *Dunn* v. *Reg*; *De Dohse* v. *Reg* (3). The question then to be determined is, Has the Civil Service Act, 1884, made an exception to this rule?", and it was held that it had. In the result it was held that the respondent who had entered the service of the Government of New South Wales under and in accordance with the provisions of the Civil Service Act, 1884, was not liable to be dismissed at the pleasure of the Government because of these provisions. We do not say anything as to whether the principle of *Gould* v. *Stuart* (1) will apply to our country in view of the constitutional provision contained in Art. 310. Such a question has not been argued at the bar and does not require to be decided in this case. If the principle of that case does not apply, then the village officer, if he is a servant of the Government, is liable to dismissal at its pleasure, in spite of s. 7 of the Act and if it does, then the fact that he is not liable to such dismissal does not prove that he does not hold office under the Government. It would thus appear

(1) [1896] A.C. 579. (2) (1936) L.R. 64 I.A. 55.
(3) [1896] 1 Q.B. 117, n. (7).

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that the fact that an officer is not liable to dismissal at the pleasure of the Government does not by itself establish that he does not hold office under the Government.

We now come to the question of the remuneration of a village officer. The High Court in its judgment referred to the rules under the Act as to the mode of payment of the emoluments and held that there was no direct payment of his dues by the Government to a village officer. That, according to the High Court, also showed that the officer did not hold his office under the Government. This view also is, in our opinion, unfounded. Government lands are allotted by it to the officers by way of emoluments for services to be rendered and the cash allowances are also fixed by the Government. It is true that under the rules cash allowances are not paid directly by the Government to the officers but the latter are authorised to deduct the amounts thereof from the revenue collected by them. This does not show that the cash remuneration is not paid by the Government. The revenue collected belongs to the Government. The Rules provide that where an officer deducts the cash allowance from the revenue collected by him and deposits the balance in the Government Treasury, his receipt for the amount deducted shall be considered equivalent to the payment into the Treasury of an equal sum in cash: (see rule 75 XIII of the Rules framed under the Act). The result, therefore, of this rule is as if the entire amount of the revenue collected had been deposited into the treasury and part of it paid back to the officer on account of his cash remuneration. In any event, it seems clear to us that the cash allowance to the officer concerned is, in spite of the procedure laid down in respect of its payment, a payment by the Government out of its moneys.

Lastly, we find that the duties of the village officers are fixed by the Government and these officers work under the direction, control and supervision of the Government. This is conceded.

We then come to this that Patels and Shanbhogs are officers, who are appointed to their offices by the

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Government though it may be that the Government has no option in certain cases but to appoint an heir of the last holder; that they hold their office by reason of such appointment only; that they work under the control and supervision of the Government; that their remuneration is paid by the Government out of Government funds and assets; and that they are removable by the Government, and that there is no one else under whom their offices could be held. All these clearly establish that Patels and Shanbhogs hold offices of profit under the Government. In this view of the matter it has to be held that the nomination papers of Hanumanthappa, Siddappa and Guru Rao were rightly rejected by the Returning Officer and the election petition is without substance.

The appeal, therefore, succeeds and is allowed. The judgment and order of the High Court are set aside, and those of the Election Tribunal restored. The election petition is dismissed. The respondents will pay the appellant's costs throughout.

Appeal allowed.

1958

August 22.

HANSKUMAR KISHANCHAND

v.

THE UNION OF INDIA

(and connected appeal)

(VENKATARAMA AIYAR, GAJENDRAGADKAR and A. K. SARKAR JJ.)

Appeal to Supreme Court—Maintainability—Decision of High Court in appeal from an award—If and when a judgment, decree or order—Test—Defence of India Act, 1939 (No. XXXV of 1939), ss. 19(1)(b), 19(1)(f)—Code of Civil Procedure (Act V of 1908), ss. 109, 110.

These two appeals were preferred against the decision of the Nagpur High Court in an appeal under s. 19(1)(f) of the Defence of India Act, 1939, modifying an award of compensation made