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September 20.

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v.

U. JORMANIK SIEM AND ANOTHER.

(B. P. SINHA, C. J., J. L. KAPUR, P. B. GAJENDRAGADKAR, K. SUBBA RAO and K. N. WANCHOO, JJ.)

Assam Tribal Areas, administration of—Removal of tribal Chief—Whether permissible by administrative action without making of law—District Council—Executive Committee, powers of—Interim suspension of Chief—Constitution of India, Sixth Schedule.

The respondent was Siem of Mylliem siemship in United Khasi and Jaintia Hills District in the Tribal Areas of Assam, having been elected as such by the Myntri electors according to custom in 1951. In June, 1952, a District Council was constituted for the District under the Sixth Schedule to the Constitution and the siemship was brought under it. The rules in the Sixth Schedule empowered the District Council to make laws with respect to various matters regarding the administration of the District including the appointment or succession of Chiefs and Headmen. No law was made regulating the appointment and succession of Chiefs and Headmen. The Chief Executive Member of the Executive Committee of the District Council served on the respondent a notice to show cause why he should not be removed from his office and suspended him. The respondent challenged the action on the grounds: (i) that he could not be removed by administrative orders but only by making a law, (ii) that the Executive Committee could not take any action in this case, and (iii) that the order of suspension was ultra vires.

Held, that the District Council had the power to appoint or remove administrative personnel under the general power of administration vested in it by the Sixth Schedule. The District Council was both an administrativeas well as a legislative body. After a law was made with respect to the appointment or removal of administrative personnel the authority would be bound to follow it; but until then it could exercise its administrative powers. Since the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Head men) Act, 1959, had now come into force further action should be taken in accordance with that Act.

The Executive Committee could, under r. 30(a) of the Assam Autonomous Districts (Constitution of District Councils) Rules, 1951, act on behalf of the District Council in cases of emergency and it was not for the courts to go into the question whether there was an emergency or not. In these circumstances the action taken by the Executive Committee could not be challenged.

An order of interim suspension could be passed against the

respondent while inquiry was pending into his conduct even though there was no specific provision to that effect in his terms of appointment. But he was entitled to his remuneration for the period of his interim suspension as there was no statute or rule existing under which it could be withheld.

The Management of Hotel Imperial v. *Hotel Workers' Union*, [1960] 1 S.C.R. 476, applied.

Per Subba Rao, J.—It is very doubtful whether, when the Constitution confers on an authority power to make laws in respect of a specific subject matter, that authority can deal with the same subject matter without making such a law in its administrative capacity.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 394 of 1960.

Appeal from the judgment and order dated April 19, 1960, of the Assam High Court in Civil Rule No. 69/1959.

C. K. Daphtary, Solicitor-General of India, A. V. Viswanatha Sastri, Narendra Kumar Lahiri and *R. Gopalakrishnan*, for the appellant.

N. C. Chatterjee and *D. N. Mukherjee*, for respondent No. 1.

Naunit Lal, for respondent No. 2.

1960. September 20. The Judgment of Sinha, C. J., Kapur, Gajendragadkar and Wanchoo, JJ., was delivered by Wanchoo, J. Subba Rao, J., delivered a separate Judgment.

Wanchoo J.

WANCHOO J.—This appeal, on a certificate granted under Art. 132 (1) of the Constitution by the Assam High Court, raises questions regarding the interpretation of certain provisions of the Sixth Schedule of the Constitution. A writ petition was filed by U. Jormanik Siem (hereinafter called the respondent) in the Assam High Court against the Chief Executive Member of the District Council (hereinafter called the appellant). United Khasi and Jaintia Hills District (hereinafter called the District). The case of the respondent was that he was Siem of Mylliem siemship in the District and was elected as such by the Myntries and the people according to custom in 1951. After the constitution of the District Council for the District, in

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June 1952, the siemship was brought under it and the respondent continued to discharge the administrative and judicial functions, for which he was remunerated by a share of the gross income of the siemship. The Siem once appointed could not be removed from his office except through a referendum of the people according to custom until such custom was changed by legislation passed by the District Council with the concurrence of the Governor. No such legislation had however been passed till the writ petition was made on July 8, 1959. But on account of political differences between the respondent and the then Chief Executive Member an attempt was made after the General Elections of 1957 to harm the respondent. In consequence certain charges were levelled against the respondent and a Durbar was called by the appellant for July 6, 1959, and the respondent was asked to be present at the Durbar to defend himself. It is not clear whether the Durbar was held or not but an order was issued on July 7, 1959, by the appellant in which it was said that the charges against the respondent had been forwarded to him and he had been given an opportunity to show cause on or before July 17, 1959, why he should not be removed from his office and that he had failed to appear before the appellant on July 7 as ordered. Therefore, the respondent was suspended from his office from July 8, 1959, and was required to make over charge to the acting Siem on the same day. The respondent however filed the writ petition on July 8, 1959, which was admitted the same day and notice was issued to the appellant to show cause why the writ should not be granted. The High Court also passed an order staying the operation of the order of the appellant dated July 7, 1959. The respondent contended that he could not be removed from his office or suspended by the Executive Committee of the District Council and that the order of the appellant suspending him was illegal and *ultra vires* being against custom and usage relating to that matter. Further the order of the appellant was without jurisdiction as it was passed without the approval of the District Council and there was no emergency

justifying the order. The order was also *mala fide* and was due to political animosity between the respondent and the Executive Committee.

The petition was opposed on behalf of the appellant, and its main contention was that the Siem was nominated by an electoral college consisting of the representatives of several clans and that the people in general had nothing to do with it and that the nomination of the Siem by the electoral college was subject to approval of the Government. In accordance with that custom, the respondent's nomination by the Myntri-electors to the siemship of Mylliem was approved by the Government and he was appointed to the office of Siem subject to confirmation by the District Council when that body came into existence. After the District Council was constituted in 1952, it approved the provisional appointment made by the Government and confirmed it on certain terms mentioned in the letter of April 9, 1953. Later these terms were modified by the District Council in certain particulars by letter dated August 9, 1955, and the respondent had been working as Siem by virtue of this confirmation by the District Council on the terms conveyed to him in the two letters mentioned above. There was no custom which required a referendum of the people before the Siem of Mylliem could be removed from office. On the other hand, the Siem being appointed by the Government formerly and now by the District Council was liable to removal and or suspension by the appointing authority in case he did not act in accordance with the terms of his appointment and was guilty of oppression, misconduct or dereliction of duty. The charge of political animosity against the then Chief Executive Member was denied and attention was drawn to the respondent's conduct in the discharge of his duties which showed that he was unfit to hold the office of Siem; consequently an order was passed on July 7, 1959, suspending him and the order was legal, *intra vires* and in keeping with custom and usage of the land and it was not necessary to obtain the approval of the District Council to the passing of that order which was in accordance with

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the terms of appointment of the respondent. Further the Executive Committee, considering all the circumstances of the case, was of the opinion that the matter was of emergency and therefore took action without getting the order approved by the District Council.

The High Court did not go into the question whether there was any custom by which the Siem could be removed only by a referendum. It held that after the coming into force of the Constitution, the Khasi States lost all existence as separate entities except in so far as their existence or authority was preserved by the Constitution. It also held that the respondent was appointed to the office of Siem by the Deputy Commissioner on behalf of the Government with due regard to the nomination made by the Myntri-electors and this appointment was subject to confirmation by the District Council when that body was constituted and that in fact the District Council confirmed the appointment on April 9, 1953, on certain terms which were revised in 1955. It also held that the administration of the District vested in the District Council; but it was of the view that the appointment and succession of Siems were never intended to be its administrative function and therefore the District Council could only act in this matter by making law with the assent of the Governor and not by passing orders in exercise of its administrative functions. Therefore the power to appoint, even if it included the power to dismiss, could be exercised by the District Council only by means of proper legislation. In the result, the High Court allowed the petition and directed that the order of July 7, 1959, should not be given effect to as it was not supported by law. Thereupon the appellant applied for and obtained a certificate from the High Court under Art. 132 of the Constitution; and that is how the matter has come up before us.

Before we deal with the main point on the basis of which the writ filed by the respondent in the High Court has succeeded, it will be useful to consider what the position of the Chiefs in the former Khasi States was before 1947 and how that position was affected

by the coming into force of the Constitution in 1950. It appears that before 1947 there were twenty-five such Chiefs who had however very limited powers. In some of the States, the succession appears to have been hereditary; but in most of them the Chief by whatever name he was known was elected either by what was equivalent to an electoral college or by the people generally, the election in many cases being confined to members of certain families known as the Chief's families. But whether the succession was hereditary or the Chief was elected by the electoral college or by the people, the recognition of the British Government through the Crown representative was necessary before the Chief could exercise any powers and this was conveyed by means of sanads granted to the Chief. It further appears that the British Government through the Crown representative as paramount power, reserved to itself the right to remove the Chief in case of oppression, misconduct or dereliction of duty, though before taking such action the prevalent custom in the particular State regarding the ascertainment of the wishes of the electoral college or the people was followed. The Chiefs were also under the control of the Deputy Commissioner of the district. This was the position upto the 15th of August, 1947, when India became a Dominion. Thereafter the paramountcy of the British Government lapsed and it appears that the twenty-five Chiefs established a Federation. Thereafter a new relationship was established between these twenty-five Chiefs and the Government of India by means of an Instrument of Accession which was accepted by the Governor-General of India on August 17, 1948. By this Instrument, the Chiefs individually as well as collectively as members of the Federation acceded to the Dominion of India by which all existing administrative arrangements between the Government of India and the State of Assam on the one hand and the Khasi States on the other were to continue in force until new or modified arrangements were made subject to certain exceptions as to judicial and administrative powers. It is not necessary to set out these exceptions

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except that so far as administrative powers were concerned, only excise, forests, land and water rights and the revenue derived therefrom were excepted and all the remaining functions were to be common with the Central or State Government. Further in the matter of legislation, the Dominion Legislature and the Assam Legislature had the power to pass laws concerning subjects of common interest with the proviso that some machinery should be devised for representation in the Assam legislature.

This position continued till the Constitution came into force. There was no merger as such of the twenty-five Khasi States in India before January 26, 1950. But the Constitution, by the First Schedule in which the territories of the State of Assam were defined, merged the Khasi States into the State of Assam, as that State was to consist of the territories which immediately before the commencement of the Constitution were comprised in the Province of Assam, the Khasi States and the Assam Tribal Areas but excluding the territories specified in the Schedule to the Assam (Alteration of Boundaries) Act, 1951. Thus by the Constitution the Khasi States were merged in the State of Assam and any power of the Chiefs so far as administration was concerned came to end. By Art. 244(2) of the Constitution, however, special provisions contained in the Sixth Schedule thereof were to apply to the administration of the Tribal Areas in the State of Assam. The position therefore after the coming into force of the Constitution was that the Chiefs lost whatever ruling or administrative powers they had by the merger of these twenty-five States in Assam and the governance of these States was to be carried on according to the provisions of the Sixth Schedule.

This brings us to the Sixth Schedule, and we may refer briefly to the provisions contained therein with respect to the administration of the tribal areas in Assam. By paras. 1 and 20 the whole tribal area is divided into autonomous districts and two other areas. Autonomous districts can in turn be divided into autonomous regions. Paragraphs 2 to 17 deal

with the administration of autonomous districts and autonomous regions, while para. 18 provides for the application by the Governor of the provisions of paras. 2 to 17 to the other two areas specified in para. 20. Paragraph 19 deals with transitional provisions and para. 21 with the amendment of the Schedule. It may be mentioned that the United Khasi and Jaintia Hills District with which we are concerned in this case is to comprise the territories which before the commencement of the Constitution were known as the Khasi States and the Khasi and Jaintia Hills Districts, excluding certain areas within the cantonment and municipality of Shillong. District Councils and Regional Councils are to be constituted under para. 2 and the Governor is given power to make rules for the first constitution of District Councils and Regional Councils in consultation with the existing tribal councils and other representative tribal organisations within the districts or regions concerned and the rules are to provide for the composition of the councils, the delimitation of territorial constituencies, the qualifications for voting at elections and the preparation of electoral rolls, the qualifications for being elected as members of councils, the term of office of the members and any other matter relating to or connected with elections or nominations to such councils, the procedure and conduct of business in the councils, and the appointment of officers and staff of the councils. These very powers were conferred on the District or Regional Council after it came into being along with certain other powers for the formation of local Councils or Boards and their procedure and the conduct of business, and generally all matters relating to the transaction of business pertaining to the administration of the district or region, as the case may be. Further para. 2(4) provides that the administration of autonomous district shall, in so far as it is not vested under this Schedule in any Regional Council within such district, be vested in the District Council for such district and the administration of an autonomous region shall be vested in the

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Regional Council for such region. Paragraph 3 gives power to the District and Regional Councils to make laws with respect to various matters including the appointment or succession of Chiefs or Headmen, subject to such laws being submitted to the Governor without whose assent they are not to come into force. Paragraphs 4 and 5 deal with administration of justice. Paragraph 6 gives powers to the District Council to establish, construct or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads and waterways. Paragraphs 7, 8 and 9 deal with financial matters. Paragraph 10 gives power to the District Councils to make regulations for the control of money lending and trading by non-tribals, which are to come into force on the assent of the Governor. Paragraph 11 provides for publication of laws, rules and regulations made under the Schedule. Paragraph 12 deals with the application of Acts of Parliament and the Legislature of the State to autonomous districts and autonomous regions. Paragraph 13 deals with the budget while para. 14 provides for the appointment of a commission by the Governor at any time to inquire into and report on the administration of autonomous districts and autonomous regions. Paragraph 15 gives power to the Governor to annul or suspend any Act or regulation of District and Regional Councils under certain contingencies and also gives him power to suspend the Council and assume all or any of its powers to himself subject to such order being placed before the Assam legislature. Paragraph 16 gives power to the Governor to dissolve a District or Regional Council on the recommendation of the Commission appointed under para. 14 and order a fresh election and in the meantime to assume the administration of the area to himself subject to the previous approval of the Assam legislature. Paragraph 17 deals with the forming of constituencies for the Assam Legislative Assembly. Then we come to para. 19, which deals with transitional provisions and lays down that as soon as possible after the commencement of the Constitution, the Governor shall take steps for the constitution of

a District Council for each autonomous district in the State under the Schedule and until a District Council is so constituted for an autonomous district, the administration of such district shall be vested in the Governor. It also provides that no Act of Parliament or of the Assam legislature shall apply to any area unless the Governor by public notification so directs and the Governor in giving such direction with respect to any Act may direct that the Act shall in its application to the area or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit. The Governor is also given power to make regulations for the peace and good government of any area and any regulation so made may repeal or amend any Act of Parliament or of the Assam legislature or any existing law which is for the time being applicable to such area. The power to make regulations is subject to the assent by the President.

It will thus be seen from the scheme of the Sixth Schedule that the District Council is both an administrative as well as a legislative body. Further all the administrative and legislative powers were vested in the Governor by para. 19 till the District Councils were constituted. The Governor framed Rules under para. 2 (6) in 1951 called the Assam Autonomous Districts (Constitution of District Councils) Rules, 1951. The Rules provide *inter alia* for an Executive Committee with the Chief Executive Member as the head and two other members to exercise the executive functions of the District Council. The Rules also specify the matters which are excepted from the purview of the Executive Committee, though in an emergency, the Executive Committee of some of the autonomous districts is authorised to take such action with respect to excepted matters as might be necessary; but every such case has to be laid before the District Council at its next session. In pursuance of these Rules, the District Council for the District came into being from June 1952.

We have already observed that the administrative powers of the Chiefs as they existed before January

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26, 1950, came to an end with the coming into force of the Constitution and during the transitional period all administrative powers vested in the Governor which could be exercised by those appointed by him under his powers under para. 19 of the Sixth Schedule. It is in this background that we have to consider the notification of March 6, 1951. That notification notified for the general information of the subjects of Mylliem Siemship that Government after careful consideration of the nomination made by the Myntri-electors of the successor to the Siemship of Mylliem and also of the objections to this nomination, had appointed the respondent as Siem of Mylliem in place of late U. Sati Raja subject to confirmation by the District Council when that body was constituted. It was also notified that the respondent had taken over charge of the Siemship with effect from March 5, 1951. It is clear from what we have said above that the Myntri-electors in this particular case used to elect a person and their election amounted to a nomination of that person for the approval of the Governor to the Siemship of Mylliem; but until the Governor approved of the nomination and appointed the person so nominated to the Siemship he could not hold office as Siem of Mylliem. The position therefore just after the coming into force of the Constitution was that the Governor was charged with the administration of the autonomous districts till the District Councils came into existence and that carried with it the power to appoint officers to carry on the administration. The appointment therefore of the respondent as Siem of Mylliem was made by virtue of the Governor's power under para. 19 and the respondent derived his power as Siem from that appointment and could not claim any power outside that appointment. The Governor of course made it clear that the appointment was subject to confirmation of the District Council when it came into being, for the Governor's powers at the time of the appointment were derived from para. 19 and were transitional only. That is why it was said that the appointment was subject to confirmation by the District Council. Therefore when the District Council

came into existence in June 1952, it, in due course, in exercise of its administrative powers under para. 2 (4), considered the question of confirmation of the appointment made by the Governor in 1951 and confirmed the respondent's appointment as Siem of Mylliem and communicated it to him along with the terms on which the confirmation was made. Besides the financial clauses, one of the terms provided that the Siem shall be subject to the control of the District Council and shall carry out all the orders issued to him from time to time by the District Council or its officers acting for and on behalf of the District Council. It was also provided that the Siem shall conduct himself in accordance with the established customs and usages approved by the District Council and in accordance with the rules, laws and regulations that the District Council may issue from time to time. Another term provided that the Siem and others shall be liable to removal from their offices by the order of the District Council if that body was satisfied that any of them did not discharge his duties properly or had been acting in a manner prejudicial to the interest of the Siemship or the District Council in general or had been conducting himself with indecorum; and such order passed by the District Council would be final. Therefore, after April, 1953, the respondent continued in the office of Siem by virtue of this confirmation by the District Council.

In 1955, there was some modification of the terms which was communicated to the respondent on August 9, 1955. The respondent was informed that he would continue as Siem as long as he was not removed from the Siemship by the order of the District Council for any lapse on his part; he was to submit to the directions of the District Council and to obey all orders issued by the Chief Executive Member or any officer of the District Council empowered to act on behalf of the Chief Executive Member; the respondent was to conduct the affairs of the Elaka according to the existing customs and customary laws as approved by the District Council and in accordance with the rules and regulations which the District Council had

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enforced or might enforce in future. Provision was also made for the judicial powers of the Siem in accordance with the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953. Besides, there were certain other terms with respect to financial matters. The consequence of these orders was that the respondent's term as Siem was to continue as long as he was not removed from that office for any lapse on his part. The position therefore that emerges on a consideration of the three orders of 1951, 1953 and 1955 is that the respondent was holding the office of Siem by virtue of his appointment in the first instance by the Governor and its later confirmation by the District Council on terms which had been communicated to him and was thus no more than an administrative officer appointed by the District Council by virtue of its powers under para. 2(4) of the Schedule and working under its control.

This position apparently continued till 1959 when we come to the incidents which culminated in the order of July 7, 1959. We are not concerned in this appeal with the merits of the action taken against the respondent; nor are we concerned with the question whether there were sufficient reasons for the Executive Committee to take the action which it did against the respondent. We are only concerned with the power of the Executive Committee of the District Council to take any action at all in the matter of the respondent's removal from the office of Siem. The High Court has taken the view that the appointment and succession of a Siem was not an administrative function of the District Council and that the District Council could only act by making a law with the assent of the Governor so far as the appointment and removal of a Siem was concerned. In this connection, the High Court relied on para. 3(1)(g) of the Schedule, which lays down that the District Council shall have the power to make laws with respect to the appointment and succession of Chiefs and Headmen. The High Court seems to be of the view that until such a law is made there could be no power of appointment of a Chief or Siem like the respondent and in

consequence there would be no power of removal either. With respect, it seems to us that the High Court has read far more into para. 3(1)(g) than is justified by its language. Paragraph 3(1) is in fact something like a legislative list and enumerates the subjects on which the District Council is competent to make laws. Under para. 3(1)(g) it has power to make laws with respect to the appointment or succession of Chiefs or Headmen and this would naturally include the power to remove them. But it does not follow from this that the appointment or removal of a Chief is a legislative act or that no appointment or removal can be made without there being first a law to that effect. The High Court also seems to have thought that as there was no provision in the Sixth Schedule in terms of Arts. 73 and 162 of the Constitution, the administrative power of the District Council would not extend to the subjects enumerated in para. 3(1). Now para. 2(4) provides that the administration of an autonomous district shall vest in the District Council and this in our opinion is comprehensive enough to include all such executive powers as are necessary to be exercised for the purposes of the administration of the district. It is true that where executive power impinges upon the rights of citizens it will have to be backed by an appropriate law; but where executive power is concerned only with the personnel of the administration it is not necessary—even though it may be desirable—that there must be laws, rules or regulations governing the appointment of those who would carry on the administration under the control of the District Council. The Sixth Schedule vested the administration of the autonomous districts in the Governor during the transitional period and thereafter in the District Council. The administration could only be carried on by officers like the Siem or Chief and others below him, and it seems to us quite clear, if the administration was to be carried on, as it must, that the Governor in the first instance and the District Councils after they came into existence, would have power by virtue of the administration being vested in them to appoint officers and others to carry

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on the administration. Further once the power of appointment falls within the power of administration of the district the power of removal of officers and others so appointed would necessarily follow as a corollary. The Constitution could not have intended that all administration in the autonomous districts should come to a stop till the Governor made regulations under para. 19(1)(b) or till the District Council passed laws under para. 3(1)(g). The Governor in the first instance and the District Councils thereafter were vested with the power to carry on the administration and that in our opinion included the power to appoint and remove the personnel for carrying on the administration. Doubtless when regulations are made under para. 19(1)(b) or laws are passed under para. 3(1) with respect to the appointment or removal of the personnel of the administration, the administrative authorities would be bound to follow the regulations so made or the laws so passed. But from this it does not follow that till the regulations were made or the laws were passed, there could be no appointment or dismissal of the personnel of the administration. In our opinion, the authorities concerned would at all relevant times have the power to appoint or remove administrative personnel under the general power of administration vested in them by the Sixth Schedule. The view therefore taken by the High Court that there could be no appointment or removal by the District Council without a law having been first passed in that behalf under para. 3(1)(g) cannot be sustained.

In this case, the District Council when it confirmed the appointment of the respondent laid down certain terms by virtue of its power of administration and so far as the respondent is concerned those terms would govern the relations between him and the District Council in respect of all matters including his removal from the office of Siem. As pointed out by this Court in *Parshotam Lal Dhingra* v. *The Union of India* (1), the conditions of service of a Government servant appointed to a post are regulated by the terms of the

(1) [1958] S.C.R. 828, 841.

contract of employment, express or implied, and subject thereto, by the rules applicable to the members of the particular service. In the absence of such general rules, the particular terms offered to a particular officer on his appointment would govern the relationship between the appointing authority and the person appointed in that particular case. It would therefore be wrong to hold that the respondent could not be removed from his office after his appointment in accordance with the terms on which he was appointed. On the view taken by the High Court, even the appointment of the respondent would be illegal for there was no law to support that appointment at the relevant time. But as we have said above, the Governor and later the District Councils being vested with the administration of the autonomous districts would be entitled to appoint personnel for carrying on the administration and the power to appoint would include from its very nature, being inherent in it, the power of removal, for it can hardly be contended that though the appointment might be made, the authority making the appointment would have no power to remove a person once appointed. In this particular case there can be no difficulty whatsoever because when the District Council confirmed the appointment of the respondent it laid down the terms on which the appointment will be held as well as the terms on which the respondent could be removed from the office, in which he was being continued. Nor can it be said that the appointment in this case was by the Governor and therefore the Governor could alone remove him, for the notification of March 1951 made it clear that the appointment by the Governor was provisional and was subject to confirmation by the District Council when it came into existence. The District Council in fact confirmed the appointment of the respondent in April 1953 and so in law the appointment of the respondent was by the District Council and therefore it would have the power to remove him. Besides, if, as the High Court thought, the appointment of the respondent was invalid, it

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would inevitably follow that he had no right to ask for a writ under Art. 226; if the appointment was bad, he had no legal right and he cannot complain against his suspension. We are therefore of opinion that the respondent being an officer appointed to carry on the administration by the District Council could be removed by it in accordance with the terms and conditions of his appointment.

The next question that arises is whether the Executive Committee could take the action which it did in this case. Ordinarily, the appointment being made by the District Council, the removal could only be by it. The contention on behalf of the respondent is that even if the District Council had the power to remove in accordance with the terms and conditions of the respondent's appointment that power could only be exercised by the District Council and not by the Executive Committee. In this connection, rr. 28, 29 and 30 of the Assam Autonomous Districts (Constitution of District Councils) Rules, 1951, are relevant. Rule 28 vests the executive functions of the District Council in the Executive Committee. Rule 29 (1) gives power to the Executive Committee to dispose of all matters falling within its purview subject to certain exceptions mentioned in r. 29(2). One of these exceptions is with respect to all important appointments. Assuming that the office of siem is an important appointment, the Executive Committee could not normally deal with it in view of the exceptions in r. 29(2). But r. 30(a) lays down that where immediate action in respect of any of the excepted matters is necessary, the Executive Committee of a District Council other than that of the Mikhir Hills or the North Cachar Hills, may take such action thereon as the emergency appears to it to require; but every such case shall have to be laid before the District Council at its next session. The order of July 7, 1959, shows that the Executive Committee took action under r. 30(a) as it considered the matter to be one of emergency. It is not for the courts to go into the question whether there was emergency or not with respect to excepted matters and in the circumstances

the action taken by the Executive Committee cannot be challenged on the ground that it is beyond its power.

The last point that has been urged is that in any case the Executive Committee could not suspend the respondent, and reliance in this connection is placed on *The Management of Hotel Imperial* v. *Hotel Workers' Union* (1). This Court held in that case as under :—

"It was now well settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the so-called period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay." It is urged on the basis of these observations that in any case the respondent could not be suspended. Suspension is of two kinds. In the first place, suspension may be as a punishment, but the present is not a case of this kind of suspension ; in the second place interim suspension may be made pending inquiry into a case where removal is the result sought. It was this type of interim suspension which was dealt with in the case of *Hotel Imperial* (1) and it was pointed out that without an express term in the contract or without some provision of a statute or the rules there could not be interim suspension in the sense that the master could withhold the wages of the servant. But

(1) [1960] 1 S.C.R. 476.

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that case did not lay down that the master could not forbid the servant from working while he was inquiring into his conduct with a view to removing him from service. It was specifically said there that if the master does so, namely, forbids the servant to work and thus in fact suspends him as an interim measure he will have to pay the wages during the period of interim suspension. These wages or payment for the work done or emolument of the office held could not be withheld in whole or in part unless there is power to make an order of interim suspension either in the contract of employment or in the statute or the rules framed thereunder. The effect of that decision is that in the absence of such power the master can pass an order of interim suspension but he will have to pay the servant according to the terms of contract between them. In the present case the terms and conditions communicated to the respondent do not indicate an express term giving power to the District Council to make an order of interim suspension while inquiring into the conduct of the respondent with a view to his ultimate removal. No statute or rules framed thereunder have been brought to our notice which authorised interim suspension having the effect of withholding remuneration in whole or in part. In the circumstances therefore though an order of interim suspension could be made against the respondent while inquiry into his conduct with a view to his ultimate removal is going on, his remuneration according to the terms and conditions communicated to him cannot be withheld unless there is some statute or rules framed thereunder which would justify the withholding of the whole or part of the remuneration. So far therefore as there is no statute or rule thereunder the remuneration cannot be withheld from the respondent even though an order of interim suspension, in the sense he is told not to do the work of his office, may be made against him. The order of interim suspension therefore passed in this case on July 7, 1959, would be valid subject of course to the respondent being paid the full remuneration unless the District Council can legitimately withhold the whole or part of it under some statute or

rules framed thereunder, there being undoubtedly no express contract to that effect in this case.

Before we part with this case we should like to point out that a law has now been passed, namely, The United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 (No. II of 1959), which came into force in October 1959. It deals with the appointment of Chiefs and Headmen as well as their removal and suspension (as a punishment). The word "Chief" includes a Siem, a Lyngdoh, etc. and the respondent would therefore be a chief within the meaning of this Act and further action may be taken accordingly.

We therefore allow the appeal with costs, set aside the order of the High Court and direct that further action be taken in the manner indicated by us above.

SUBBA RAO J.—I agree with the conclusion. But I have considerable and serious doubts on the question whether, when the Constitution confers on an authority power to make laws in respect of a specific subject-matter, the said authority can deal with the same subject-matter without making such a law in its administrative capacity. I would, therefore, prefer not to express my opinion on this question. But I agree with the other two reasons given by my learned brother, namely, (1) if the respondents' contentions were to prevail, the order of appointment would itself be bad, with the result that the Siem would not have any right to the office; (2) on October 16, 1959, an Act, known as the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act (No. II of 1959), was passed and, therefore, there is now a valid law empowering the District Council to remove a Siem; and, as the enquiry in question is only at its initial stage, it can hereafter be validly conducted under the provisions of the said Act.

Subba Rao J.

Appeal allowed.