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'Castle' being separately assessed at Bombay in the status of a registered firm apparently refer to assessment of that business in subsequent years and not in the year of assessment 1951-52. The conclusion of the Tribunal therefore suffers from a double infirmity: it assumes the only fact on which its conclusion is founded and ignores other relevant matters on which the Appellate Assistant Commissioner relied in support of his conclusion. The Tribunal has therefore misdirected itself in law in arriving at its finding, and in refusing to require the Tribunal to state the case and to refer it, the High Court was, in our view, in error.

The appeal is therefore allowed and the proceedings are remanded to the High Court with a direction to proceed according to law. Costs in this appeal will be costs in the High Court.

Appeal allowed and Case remanded.

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November 19

R.P. KAPUR

v.

UNION OF INDIA AND ANR.

(P.B. GAJENDRAGADKAR, K. SUBBA RAO, K.N. WANCHOO, J.C. SHAH AND RAGHUBAR DYAL, JJ.)

Civil Service—Member of former Secretary of State's Service suspended by Governor pending criminal proceeding—Validity of order—Rule, if ultra vires—*All India Services (Discipline and Appeal) Rules*, 1955, *r.*7—*Constitution of India, Art.* 314—*Government of India Act*, 1935, *ss.*241, 247—*Civil Services (Classification, Control and Appeal) Rules, rr.* 49, 56—*Fundamental Rules, r.*53—*Indian Administrative Service (Recruitment) Rules.* 1954, *r.*3—*India, (Provisional Constitution) Order*, 1947, *Art.*7(1).—*Indian Independence Act*, 1947, *s.* 10

The appellant joined the Indian Civil Service in 1939 and was posted in the province of Madras. After the transfer of power under the Indian Independence Act on August 15,1947, he was

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transferred to the Punjab and later when the Indian Administrative Service was constituted he became its member. On July 18, 1959, he was suspended by the Governor of the State of Punjab under r. 7(3) of the Indian Services (Discipline and Appeal) Rules, 1955, on the ground that a criminal case was pending against him. He challenged the order of suspension by a writ petition in the Punjab High Court as being violative of the guarantee contained in Art. 314 of the Constitution and contrary to r. 49 of the Civil Services (Classification, Control and Appeal) Rules which provided only for suspension as a penalty. His case was that there was no provision immediately before January 26, 1950, that provided for suspension otherwise than as penalty. The High Court dismissed the petition.

Held:—(per Gajendragadkar, Subba Rao, Wanchoo and Shah, JJ). The general law of master and servant and s. 247 of the Government of India Act, r. 53 of the Fundamental Rules and rr. 49, 56 of the Civil Services (Classification, Control and Appeal) Rules, read together clearly show that members of the former Secretary of State's Services were on August 14, 1947, liable to suspension either as an interim measure or as a punishment. Interim suspension could be imposed either by the Secretary of State as the appointing authority or the Governor-General or the Governor, as the case might be, as the statutory authority.

Management of Hotel Imperial, New Delhi v. *Hotel Workers' Union*, [1960] 1 S.C.R. 476 and *T. Cajee* v. *U. Jormanik Siem*, [1961] 1 S.C.R. 750, referred to.

It was not therefore correct to say that there could be no suspension except by way of punishment under r.49 of the Appeal Rules before 1947. In a case of interim suspension before 1947 there was however no right of appeal.

Article 314 of the Constitution, properly construed, affords such protection to the members of the Secretary of State's Services as they were entitled to immediately before the commencement of the Constitution. There can be no doubt that suspension pending a departmental enquiry or a criminal proceeding falls within the word 'disciplinary matters' used in that Article.

It was not correct to say that as independence was conferred on India and the Services automatically terminated, there was in law reappointment of all the former Secretary of State's Services, and those serving in a province must be deemed to have been reappointed by the Governor and that, consequently, the Governor as the appointing authority had the power to order suspension.

Article 7(1) of India (Provisional Constitution) Order, 1947, G.G.O. 14, read with s. 10 of the Independence Act, 1947, in the light of other relevant circumstances shows that the final decision whether or not the former members of the Secretary of State's Services should continue was of the Government of India and that Government, therefore, must be deemed to have appointed

them to posts either under itself or in the Provinces. Section 241(b) of the Government of India Act, as it then stood, and s.240(2) of the said Act, as amended by G.G.O. 14, could not alter this position.

State of Madras v. *K.M. Rajagopalan*, [1955] 2 S.C.R. 541, referred to.

On the eve of the commencement of the Constitution *i.e.* January 25, 1950, a former member of the Secretary of State's Services could be suspended under the general law by the Government of India alone as the appointing authority as an interim measure pending departmental enquiry or criminal proceeding and by no other authority. He was liable to suspension as punishment under s. 49 of the Civil Services (Classification, Control and Appeal) Rules. Rule 53 of the Fundamental Rules governed pay during interim suspension or suspension as penalty. While there was no appeal from an order of interim suspension, r. 56 of the Appeal Rules provided for an appeal from an order of suspension as penalty. It was this position which Art. 314 of the Constitution sought to protect.

Rule 7 of the All India Services (Discipline and Appeal) Rules, 1955, violated the guarantee contained in Art. 314 in resp ct to interim suspension and was to that extent *ultra vires* in so far as it applied to the members of the Indian Administrative Services who fell within cls. (a) and (b) of r.3 of the Indian Administrative Services (Recruitment) Rules, 1954. The Governor's Order under r.7(3) directing interim suspension of the appellant must, therefore, be set aside. The proper procedure would be to approach Government of India for such interim suspension.

The Accountant General, Bihar v. *N. Bakshi*, [1962] Supp. 1 S.C.R. 505, referred to.

Per Dayal, J.—In view of the provisions of s. 241 of the Government of India Act as modified by the India (Provisional Constituion) Order, 1947, G.G.O. 14 of 1947, members of the Secretary of State's Services who were holding posts under a provincial Government immediately before the appointed day, *i.e.*, August 15, 1947, and continued in service thereafter must be deemed in view of art. 7(1) of the said Order to have been appointed to the corresponding posts by the appropriate authority, the Governor of the Province. That article generally applied to all appointments on and after the appointed day. The appellant cannot be deemed to have been appointed by the Governor-General or the Government of India. It was not intended that merely because that Order was made by the Governor-General, the deemed appointments must be taken to have been made by him.

It would be anomalous to hold that the Governor, who was in administrative control of the services, could not pass an interim order of suspension against a person appointed by the Secretary of State, though he could impose a penalty of suspension under

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rr. 49 and 52 of the Civil Services (Classification, Control and Appeal) Rules, which continued in force till the All India Services (Discipline and Appeal) Rules came into force in 1955.

The Indian Civil Services ceased to exist from August 15, 1947, and the services of its members automatically terminated on August 14, 1947. The appellant's service, therefore, came to an end on August 14, 1947, but since he was serving under the Madras Government immediately before August 15, 1947, and continued to do so thereafter he must be deemed to have been appointed by the Governor of Madras to the post he was holding on the appointed day.

Rule 7 of the All India Services (Discipline and Appeal) Rules, 1955, does not violate the provision of Art. 314 of the Constitution, nor can the absence of a right of appeal against interim suspension do so since the appellant had none before the Constitution. His suspension by the Governor of Punjab under r.7(3) was, therefore valid.

State of Madras v. *K.M. Rajagopalan*, [1955] 2 S.C.R. 541, considered.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 647 of 1963.

Appeal from the judgment and order dated September 21, 1962, of the Punjab High Court in Civil Writ No. 280 of 1962.

The appellant appeared in person.

S.V. Gupte, Additional Solicitor-General, N.S. Bindra and *R.H. Dhebar*, for the respondent (Union of India).

S.M. Sikri, Advocate-General, Punjab, N.S. Bindra and *R.H. Dhebar*, for the respondent (State of Punjab).

November 19, 1963. The Judgment of P.B. Gajendragadkar, K. Subba Rao, K.N. Wanchoo and J.C. Shah, JJ. was delivered by Wanchoo, J. Raghubar Dyal, J. delivered a dissenting Opinion.

Wanchoo J.

WANCHOO J.—This is an appeal on a certificate granted by the Punjab High Court. The appellant joined the Indian Civil Service in 1939 and was governed in matters relating to discipline by the Civil Services (Classification, Control and Appeal) Rules, (hereinafter referred to as the Appeal Rules) made by

the Secretary of State for India in Council. He continued in service till the transfer of power under the Indian Independence Act, 1947. Under s.10 of that Act he continued to serve under the Government of India and was entitled to receive from the Government of India or of the Province which he might from time to time be serving the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters or, as the case may be, as respects the tenure of his office, or rights as similar thereto as changed circumstances may permit as he was entitled to immediately before the transfer of power, which took place on August 15, 1947. The same guarantee was extended to the appellant and all members of what were the Secretary of State's Services before August 15, 1947 by Art. 314 of the Constitution. As the appellant's case is based on that Article we may set it out:

> "Except as otherwise expressly provided by this Constitution, every person who having been appointed by the Secretary of State or Secretary of State in Council to a civil service of the Crown in India continues on and after the commencement of this Constitution to serve under the Government of India or of a State shall be entitled to receive from the Government of India and the Government of the State, which he is from time to time serving, the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement."

We shall hereafter refer to such a person as a member of the (former) Secretary of State's Services. It appears that the appellant was in the Indian Civil Service cadre in the State of Madras at the time of transfer of power, though later he was transferred to the Punjab. After the transfer of power the Indian

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Civil Service as a Secretary of State's Service came to an end and thereafter a new Service was constituted known as the Indian Administrative Service. Formal legal shape was given to the new Service after the enactment of the All India Services Act, No. LXI of 1951, and the Indian Administrative Service (Recruitment) Rules, 1954, (hereinafter referred to as the Recruitment Rules) were framed under Act LXI of 1951. By r. 3 of these Rules, the Indian Administrative Service was to consist of—

(a) members of the Indian Civil Service, not permanently allotted to the judiciary;

(b) members of the Indian Civil Service permanently allotted to the judiciary who have been holding executive posts from the date of the commencement of the Constitution and who may be declared by the Central Government to be members of the Service in consultation with the State Government;

(c) persons who, at the commencement of these rules, are holding substantively listed posts, other than posts in the judiciary;

(d) persons recruited to the Service before the commencement of these rules: and

(e) persons recruited to the Service in accordance with the provisions of these rules.

The appellant thus became a member of the new Indian Administrative Service by virtue of these rules and continued to serve in the Punjab. In 1955, the Central Government framed the All India Services (Discipline and Appeal) Rules, 1955 (hereinafter referred to as the Discipline Rules) which were applicable to all members of the Indian Administrative Service and the Indian Police Service.

On July 18, 1959, the appellant was suspended with immediate effect by the Governor of the Punjab on the ground that a criminal case was pending against him. The order also provided that for the period of suspension the appellant shall be paid subsistence

allowance which shall be equal to leave salary which he would have drawn under the leave rules applicable to him if he had been on leave on half average pay with a further provision that in case the suspension lasted for more than twelve months a further order fixing the rate of subsistence allowance shall be passed. This order appears to have been passed under r. 7(3) of the Discipline Rules and in consequence thereof the appellant remained under suspension.

The appellant filed a writ petition in the Punjab High Court on February 16, 1962, challenging this order of suspension. His contention was that he was entitled to the guarantee contained in Art. 314 of the Constitution and the order of suspension passed against him violated that guarantee and was therefore ineffective and invalid. He relied for this purpose on r. 49 of the Appeal Rules, which provided for suspension as a penalty. He contended that the Appeal Rules which governed him and which must be held to have continued to govern him in view of the guarantee contained in Art. 314 provided for suspension as a penalty only and that there was no provision anywhere in any rule or statute immediately before January 26, 1950 on which date the Constitution came into force, providing for suspension otherwise than as a penalty. Therefore it was not open to the Governor to suspend him in the manner in which he did so in the present case, though it was not denied that he could be suspended pending criminal proceedings provided the suspension was as a penalty under r. 49 of the Appeal Rules; on the other hand mere suspension pending a criminal case not inflicted as a penalty was not provided at all by the Rules or the statute governing the appellant immediately before January 26, 1950. Therefore when the Governor proceeded to suspend him under r. 7(3) of the Discipline Rules, he violated the guarantee contained in Art. 314. The appellant also contends that as it was not open to any authority to suspend him except as a punishment immediately before January 26, 1950, r.7 of the Discipline Rules

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which provides for suspension during disciplinary proceedings or during the pendency of a criminal charge insofar as it applies to him was *ultra vires* Art. 314 of the Constitution. He also attacked rr.3 and 10 of the Discipline Rules as violative of Art. 314 of the Constitution, r.3 being concerned with penalties to be imposed on members of the Indian Administrative Service and r.10 with the right of appeal. The contention in this connection was that r.3 omitted the penalty of suspension which was to be found in r.49 of the Appeal Rules with the result that suspension under r.7 was not open to appeal under r.10 which provided for appeals against penalties mentioned in r.3. Therefore the guarantee under Art.314 was violated inasmuch as previously whenever the penalty of suspension was inflicted on a member of the Secretary of State's Services it was open to him to appeal under r.56 of the Appeal Rules. Therefore the scheme of the Discipline Rules was such as to take away the protection to a member of the Secretary of State's Service which was available to him immediately before the Constitution came into force and in consequence rr.3 and 10 also violated the guarantee contained in Art. 314 and were *ultra vires*. The appellant therefore prayed for an appropriate writ, order or direction in the nature of *mandamus* striking down rr.3,7 and 10 of the Discipline Rules being violative of Art. 314 of the Constitution and also for an order striking down the order of the Governor dated July 18, 1959, by which he suspended the appellant and such other appropriate relief as was just and proper.

The petition was opposed by the State of Punjab and its main contention was that rr. 3,7 and 10 of the Discipline Rules were perfectly valid and did not violate the guarantee contained in Art.314. It was urged that Art. 314 only gave restricted protection to the members of what were formerly the Secretary of State's Services in respect of disciplinary matters and stress was laid on the words "or rights as similar thereto as changed circumstances may permit" appear-

ing therein. It was also urged that suspension pending departmental enquiry or pending a criminal case was not the same thing as suspension by way of punishment and that previous to January 26, 1950, there could be suspension pending departmental enquiry or pending a criminal case and that no appeal lay from such suspension even then. It was also urged that suspension pending a departmental enquiry or pending a cirminal case was not a disciplinary matter at all and was therefore not included within the sweep of Art. 314 and in any case the rule relating to suspension even if it is connected with disciplinary matters was liable to variation as changed circumstances might demand and r.7 was framed in view of the changeed circumstances. It was also urged that removal of suspension as a penalty under r. 3 could not affect the guarantee contained in Art. 314, for the effect of such removal was that there could be in future no penalty of suspension against a member of the Indian Administrative Service. Therefore as the penalty had gone r. 10 did not naturally provide for an appeal against a penalty which did not exist. Rule 7 which provides for suspension does not provide for any penalty and therefore there was no necessity of providing for any appeal against it. It was urged that a difference must be made between suspension as a penalty and suspension as an interim measure only pending a departmental enquiry or pending a criminal case and if that difference was borne in mind there was no reason for holding that rr.3 and 10 were *ultra vires* Art. 314. The respondent State finally contended that the order of the Governor passed under r. 7(3) was perfectly valid and did not violate the guarantee contained in Art. 314.

The High Court dismissed the petition. It was of the view that it was inconceivable that under the old rules prevailing before January 26, 1950, a civil servant could never be suspended while an enquiry into his conduct was pending. It was further of the view that suspension during the pendency of an enquiry was a power inherent in an employer like the

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Government and the power to suspend was always implied in the authority making the appointment. The High Court therefore rejected the contention of the appellant that under the old rules no member of the Secretary of State's Services could have been suspended except by way of punishment. The High Court further held that even if the contention of the appellant be accepted that a member of the Secretary of State's Services had a right of appeal even where he was suspended during a departmental enquiry there was a provision in the Discipline Rules for a memorial to the President (see r.20) and that in the opinion of the High Court gave a right as similar to the right existing before January 26, 1950, as the changed circumstances permitted. The High Court therefore dismissed the petition. The appellant then applied for a certificate which was granted; and that is how the matter has come up before us.

The only question that has been debated before us is with respect to suspension whether as a punishment or otherwise of a member of one of the Secretary of State's Services, in this case the Indian Civil Service, members of which have become members of the Indian Administrative Service under the Recruitment Rules; and it is only this question that falls to be determined in the present appeal. But the appellant has also challenged rr.3 and 10 of the Discipline Rules which do not deal with suspension at all. In these circumstances we do not propose to consider the *vires* of rr. 3 and 10, for that does not fall for decision as the order which is challenged has not been made under r. 3 and relates only to suspension. It is therefore unnecessary to decide whether rr. 3 and 10 can in the changed circumstances apply to those members of the Indian Administrative Service who were at one time members of the Indian Civil Service. We shall therefore express no view one way or the other on the *vires* of r. 3 and r. 10 and consider only r. 7 which deals with suspension. We should also like to make it clear that what we say during the course of this judgmemt

with respect to suspenion refers only to those members of the Indian Administrative Service who became members thereof under r. 3 (a) and (b) of the Recruitment Rules and not to other members of the Indian Administrative Service who were not members before 1947 of the Indian Civil Service, for it is only the former kind of members of the Indian Administrative Service who are entitled to the protection of Art. 314 and the whole case of the appellant is based on that protection.

Let us therefore turn to Art. 314 which we have already set out above. This Article came to be considered by this Court in the *Accountant General Bihar* v. *N. Bakshi*(1). In that case, however, that part of it was considered which related to "conditions of service as respects remuneration, leave and pension", and it was held that r. 3 of the All India Services (Overseas Pay, passage and leave salary) Rules, 1957, was *ultra vires* having regard to the guarantee contained in Art. 314 of the Constitution. That case is an authority for the proposition that where any rule is framed, which is inconsistent with the guarantee contained in Art. 314 with respect to remuneration, leave and pension, that rule would be bad. In the present case we are concerned with another part of Art. 314, namely, "the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement". The same principle will apply to this part of Art. 314 also and if any rule is framed which goes against the guarantee contained in this part of Art. 314 with respect to members of what were former Secretary of State's Services, it will be bad. What Art. 314 provides with respect to disciplinary matters is that the members of the former Secretary of State's Services who continue to serve under the Government of India or of a State would be entitled to the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances

(1) [1962] Supp. I. S.C.R. 505.

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may permit. Stress has been laid on behalf of the respondent on the words "rights as similar thereto as changed circumstances may permit", and it is urged that in view of these words it was open in the "changed circumstances" to frame rules in particular with respect to suspension pending departmental enquiry or pending criminal proceedings. These words in our opinion cannot bear this interpretation. What the words "changed circumstances" mean is the change in circumstances due to transfer of power in August, 1947, and the coming into force of the Constitution in January, 1950, and no more. Therefore when Art. 314 speaks of "rights as similar thereto as changed circumstances may permit", it only means that a member of the former Secretary of State's Services would have rights similar to his pre-existing rights as the changed circumstances resulting from constitutional changes may allow. As an illustration take a case where a member of a Secretary of State's Service could before August, 1947, be dismissed only by the Secretary of State; but after the transfer of power and the coming into force of the Constitution, circumstances have changed and there is no Secretary of State, therefore we have to look to the changed circumstances and find out which would be the authority to dismiss such a member in the changed circumstances. If we do so, we find that the Government of India can be the only authority which now in the changed circumstances will have the power to dismiss such a member in the absence of a specific provision of law in force before January 26, 1950. These words do not mean that as time passes circumstances change and therefore new rules may be framed to meet the new circumstances due to passage of time. The words "changed circumstances" in Art. 314 only refer to the constitutional changes which occurred after the transfer of power in August, 1947, and the coming into force of the Constitution in January 1950. Further, Art. 314 provides that the protection is limited only to those rights as to disciplinary matters which a member of the former Secretary of State's

Services was entitled to immediately before the commencement of the Constitution *i.e.* on January 25, 1950. It is only those rights which are protected and no more.

Another argument that is urged on behalf of the respondent is that suspension pending a departmental enquiry or pending a criminal proceeding cannot be said to be a disciplinary matter at all and therefore the protection of Art. 314 does not extend to such suspension. We cannot accept this argument. The words "disciplinary matters" with which we are concerned appear in a constitutional provision and must be given their widest meaning consistent with what disciplinary matters may reasonably include. Suspension is of two kinds, namely, as a punishment, or as an interim measure pending a departmental enquiry or pending a criminal proceeding. We shall deal with these aspect's of suspension in detail later. So far as suspension as a punishment is concerned, it is conceded that it is a disciplinary matter. The dispute is only as to suspension pending a departmental enquiry or pending a criminal proceeding. There can in our opinion be no doubt that suspension of this kind also must be comprised within the words "disciplinary matters" as used in Art. 314. Take the case of suspension pending a departmental enquiry. The purpose of such suspension is generally to facilitate a departmental enquiry and to ensure that while such enquiry is going on—it may relate to serious lapses on the part of a public servant—, he is not in a position to misuse his authority in the same way in which he might have been charged to have done so in the enquiry. In such a case suspension pending a departmental enquiry cannot be but a matter intimately related to disciplinary matters. Take again the case where suspension is pending criminal proceedings. The usual ground for suspension pending a criminal proceeding is that the charge is connected with his position as a government servant or is likely to embarass him in the discharge of his duties or involves moral turpitude.

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In such a case a public servant may be suspended pending investigation, enquiry or trial relating to a criminal charge. Such suspension also in our opinion is clearly related to disciplinary matters. If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted. Even in case of acquittal proceedings may follow where the acquittal is other than honourable. The usual practice is that where a public servant is being tried on a criminal charge, the Government postpones holding a departmental enquiry and awaits the result of the criminal trial and departmental proceedings follow on the result of the criminal trial. Therefore, suspension during investigation, enquiry or trial relating to a criminal charge is also in our opinion intimately related to disciplinary matters. We cannot therefore accept the argument on behalf of the respondent that suspension pending a departmental enquiry or pending investigation, enquiry or trial relating to a criminal charge is not a disciplinary matter within the meaning of those words in Art. 314.

Before we investigate what rights a member of the former Secretary of State's Services had with respect to suspension, whether as a punishment or pending a departmental enquiry or pending criminal proceedings, we must consider what rights the Government has in the matter of suspension of one kind or the other. The general law on the subject of suspension has been laid down by this Court in two cases, namely, *The Management of Hotel Imperial New Delhi* v. *Hotel Workers' Union*[1], and *T. Cajee* v. *U. Jormanik Siem*[2]. These two cases lay down that it is well settled that under the ordinary law of master and servant the power to suspend the servant without pay could not be implied as a term in an ordinary contract of service between the master and the servant but must arise either from an express term in the contract itself or a statutory provision governing such contract. It was further held that an order

(1) [1960] I. S.C.R. 476. (2) [1961] I. S.C.R. 750.

of interim suspension could be passed against an employee while inquiry was pending into his conduct even though there was no specific provision to that effect in his terms of appointment or in the rules. But in such a case he would be entitled to his remuneration for the period of his interim suspension if there is no statute or rule existing under which it could be withheld.

The general principle therefore is that an employer can suspend an employee pending an enquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his full remuneration for the period of his interim suspension; on the other hand if there is a term in this respect in the contract or there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles in our opinion apply with equal force in a case where the government is the employer and a public servant is the employee with this modification that in view of the peculiar structural hierarchy of government, the employer in the case of government, must be held to be the authority which has the power to appoint a public servant. On general principles therefore the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. This general principle is illustrated by the provision in s. 16 of the General Clauses Act, No. X of 1897, which lays down that where any Central Act or Regulation gives power of appointment that includes the power to suspend or dismiss unless a different intention appears. Though this provision does not directly apply in the present case,

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it is in consonance with the general law of master and servant. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. This suspension must be distinguished from suspension as a punishment which is a different matter altogether depending upon the rules in that behalf. On general principles therefore the government, like any other employer, would have a right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings; this may be called interim suspension. Or the Government may proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will be suspension as a penalty. These general principles will apply to all public servants but they will naturally be subject to the provisions of Art. 314 and this brings us to an investigation of what was the right of a member of the former Secretary of State's Services in the matter of suspension, whether as a penalty or otherwise.

As Art. 314 only guarantees protection to those rights which were in existence immediately before the Constitution came into force, all that is necessary is to find out the position before August 14, 1947, when the transfer of power took place and on January 25, 1950, just before the Constitution came into force. Members of the Secretary of State's Services who are protected under Art. 314 were appointed either by the Secretary of State or by the Secretary of State in Council. Therefore on general principles it would have been open to the Secretary of State or the Secretary of State in Council, as the case may be, to suspend a member of such Services as the appointing authority as an interim measure pending a departmental enquiry or pending a criminal proceeding if it thought fit to do so. What

remuneration such a public servant would get during such interim suspension would depend upon the rules if any, and if there were no rules he would be entitled to his full emoluments during such interim suspension. But it appears that as the Secretary of State or the Secretary of State in Council was in London it was thought proper for the sake of administrative convenience to provide for suspension by authorities other than the appointing authority. Reference in this connection may be made to s. 247 (2) of the Government of India Act. 1935, as in force upto August 13, 1947. That subsection provided that "any order suspending any such person (meaning thereby a member of the former Secretary of State's Services) from office shall, if he is serving in connection with the affairs of the Federation, be made by the Governor-General exercising his individual judgment and, if he is serving in connection with the affairs of a Province, be made by the Governor exercising his individual judgment". This sub-section therefore made a specific provision for suspension by authorities other than the appointing authority; this was in addition to the general right of the employer (namely, the Secretary of State who was the appointing authority) to suspend an employee (namely, a member of one of the former Secretary of State's Services). Suspension in s. 247 (2) cannot in our opinion be confined only to suspension as a penalty. The words are general and must be given their full meaning and would include any kind of suspension, whether as a penalty or otherwise; and this power vested firstly in the Secretary of State or the Secretary of State in Council, as the case may be, under the general law of master and servant and also in the Governor-General and the Governor, as the case may be, by virtue of this provision of the statute.

Further s. 247 (3) also provided for remuneration of a suspended member of one of the former Secretary of State's Services and laid down that "if any such person as aforesaid is suspended from office, his remuneration shall not during the period of his suspension be reduced except to such extent, if any, as may be directed by the Governor-General exercising his in-

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dividual judgment or, as the case may be, by the Governor exercising his individual judgment". Besides this statutory provision relating to former Secretary of State's Services, there was a general provision as to payment to a government servant under suspension in Fundamental Rule 53. That general provision is that a suspended government servant is at least entitled to one-fourth of his pay. This general provision was subject to s. 247 (3) and in the case of members of the former Secretary of State's Services, the Governor-General or the Governor as the case may be, had to specify the amount which could be even more than what was provided by F.R. 53. Here again when F.R. 53 speaks of suspension, it speaks of it in general terms. It applies to all kinds of suspension whether as a penalty or otherwise.

Further r. 49 of the Appeal Rules deals with penalties and provides suspension as a penalty. It also provides for appeals in r. 56 etc. where suspension is inflicted as a penalty for good and sufficient reasons. Rule 49 applied to the former Secretary of State's Services also and thus these members were subject to the penalty of suspension.

A review therefore of the general law of master and servant, the provisions of the Government of India Act, 1935, of the Appeal Rules and the Fundamental Rules discloses that the position on August 13, 1947 with respect to members of the former Secretary of State's Services with respect to suspension whether as a punishment or otherwise was as follows. Members of the former Secretary of State's Services were liable to suspension either as an interim measure or as a punishment. Where suspension was as an interim measure and not as a punishment, it could be imposed either by the Secretary of State or the Secretary of State in Council as the appointing authority or by the Governor-General or the Governor as the case may be as the statutory authority. Suspension could also be imposed by the proper authority as a punishment under the Appeal Rules and such orders of suspension were subject to appeals as provided by the Appeal Rules. There

was also provision for payment during suspension in the shape of subsistence allowance which was governed generally by F.R. 53 and in the case of members of the former Secretary of State's Services, F.R. 53 was subject to s. 247 (3) of the Government of India Act, 1935. Therefore, the contention of the appellant that there could be no suspension except by way of punishment under r. 49 of the Appeal Rules before 1947 is not correct. It is equally clear that where suspension before 1947 was an interim measure and not as a punishment under r. 49, there was no question of any appeal from such an interim suspension pending a departmental enquiry or pending a criminal proceeding. If the position on January 25, 1950, stood as it was on August 13, 1947, the appellant could not susbstantially challenge the order of the Governor passed on July 18, 1959, for it would have been covered by s. 247 (3) of the Government of India Act, 1935, and the appellant could not claim anything more under Art. 314 of the Constitution.

But Art. 314 does not speak of the protection which members of the All India Services had on August 13, 1947; it speaks of protection which they had immediately before the commencement of the Constitution *i.e.* on January 25, 1950, and that brings us to a consideration of the changes that took place between 1947 and 1950 after the transfer of power on August 15, 1947.

The effect of the transfer of power on the Secretary of State's Services in particular came up for consideration before this Court in *State of Madras* v. *K.M. Rajagopalan*[1] and it was held that "the conferral of Independence on India brought about an automatic and legal termination of service on the date of Independence. But all persons previously holding civil posts in India are deemed to have been appointed and hence to continue in service, except those governed by 'general or special orders or arrangements' affecting their respective cases. The guarantee about prior conditions of service and the previous statutory safeguards relating to disciplinary

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action continue to apply to those who are thus deemed to continue in service but not to others". Section 10 of the Indian Independence Act provides for the Secretary of State's Services and lays down that every person who having been appointed by the Secretary of State, or Secretary of State in Council, to a civil service of the Crown in India continues on and after the appointed day to serve under the Government of either of the new Dominions or of any Province or part thereof, shall be entitled to receive the same conditions of service as respects remuneration, leave and pension and the same rights as respects disciplinary matters or, as the case may be, as respects the tenure of his office, or rights as similar thereto as changed circumstances may permit as that person was entitled to immediately before the appointed day, *i.e.* August 15, 1947. By virtue of this provision those members of the Secretary of State's Services who continued to serve the Government of India or the Government of any Province from August 15, 1947, were entitled to the protection of s. 10. What *Rajagopalan's* case[1] decided was that the Government of India was not bound to continue in service every member of the Secretary of State's Services because of s. 10 of the Indian Independence Act; but that the protection of that section only applied to such members of the afore-said services whose services the Government of India agreed to continue after August 14, 1947. In *Rajagopalan's* case[1] the Government of India did not agree to continue Rajagopalan's services and therefore he could not claim the protection of s. 10 of the Indian Independence Act. In the appellant's case his service continued after the transfer of power and therefore he was entitled to the protection of s. 10 of the Indian Independence Act, which was almost in similar terms as Art. 314 of the Constitution so far as disciplinary matters were concerned.

On August 14, 1947, however, the India (Provisional Constitution) Order, 1947, was promulgated as G.G.O.14. By that Order, s. 247 of the Government of India was substituted by a new section and sub-ss. (2) and (3)

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thereof to which we have already referred were repealed. The substituted s. 247 read as under:—

> "*Conditions of service of persons originally recruited by Secretary of State*—The conditions of service of all persons who, having been appointed by the Secretary of State or the Secretary of State in Council to a civil service of the Crown in India, continue on and after the date of the establishment of the Dominion to serve under the Government of the Dominion or of any Province, shall—
>
> (a) as respects persons serving in connection with the affairs of the Dominion, be such as may be prescribed by rules made by the Governor-General;
>
> (b) as respects persons serving in connection with the affairs of a Province—
>
> (i) in regard to their pay, leave, pensions, general rights as medical attendance and any other matter which immediately before the establishment of the Dominion was regulated by rules made by the Secretary of State, be such as may be prescribed by rules made by the Governor-General; and
>
> (ii) in regard to any other matter, be such as may be prescribed by rules made by the Governor of Province."

It will be clear from this that sub-ss. (2) and (3) of s. 247 disappeared on August 14, 1947. No rules framed by the Governor-General under the new section with respect to what we have called interim suspension have been brought to our notice. Therefore no power was left in the Governor-General or the Governor, as the case may be, to suspend a member of the former Secretary of State's Services as an interim measure and only the appointing authority could suspend such a public servant, which in the changed circumstances would be the Government of India. The explanation for this may be that as the Secretary of State disappeared and his place was taken by the Government of India,

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it might not have been thought necessary to continue the further powers conferred by s. 247 (2) in addition to the general power of the appointing authority to suspend. Be that as it may, the fact remains that on August 14, 1947, s. 247 (2) disappeared and therefore the Governor-General and the Governor lost the power to suspend as an interim measure a member of the former Secretary of State's Services and such power could only be exercised by the appointing authority which in the changed circumstances must be deemed to be the Government of India. As for suspension as a punishment that continued to be provided in the Appeal Rules and no change was made therein.

It has however been urged that as the conferral of Independence on India brought about an automatic and legal termination of service on the date of Independence, there must in law have been reappointment of all members of the former Secretary of State's Services. This reappointment in case of those serving in connection with the affairs of a Province must be deemed to have been made by the Governor of the Province concerned and consequently the Governor will have the power to suspend as the appointing authority. We are of opinion that there is no force in this argument. The antecedent circumstances with respect to such Services have been fully dealt with in *Rajagopalan's case*[1] and those circumstances show that the question of the retention of officers serving in these Services was dealt with between the Government of India and His Majesty's Government and it was the Government of India which decided that all such officers should continue except those whom the Government of India was not prepared to invite to continue and in the case of this limited class the Government of India agreed to compensation. It was in consequence of this agreement between the Government of India and His Majesty's Government that s. 10 of the Independence Act provided that those officers who continued would have the same conditions of service etc. as they were entitled to immediately before August 14, 1947. The Governors of Provinces were nowhere in the picture in this matter and we can see

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no warrant for holding that the appointment must be deemed to be by the Governors of Provinces where such officers were serving in connection with the affairs of a Province.

It is true that the Indian Administrative Service as an all-India Service was legally and formally constituted in 1951. It is also true that under s. 10 of the Indian Independence Act members of the former Secretary of State's Services continued on and after August 14, 1947, to serve under the Government of either of the new Dominions or of any Province or part thereof. It is also true that there are some passages in the correspondence between His Majesty's Government and the Government of India which suggest that His Majesty's Government was thinking on the lines that members of the former Secretary of State's Services will become members of the Provincial Services. These however are not conclusive of the matter and we have to find out what actually took place after this exchange of correspondence between the Government of India and His Majesty's Government in connection with the former Secretary of State's Services. We have already indicated that s. 10 was incorporated in the Indian Independence Act in consequence of this correspondence between the Government of India and His Majesty's Government. Thereafter we find that the India (Provisional Constitution) Order, 1947 (*i.e.* G.G.O. 14) was passed on August 14,1947, under powers conferred on the Governor-General by virtue of s. 9 (1) (a) of the Indian Independence Act. Article 7 (1) of that Order is in these terms:

> "(1) Subject to any general or special orders or arrangements affecting his case, any person who immediately before the appointed day is holding any civil post under the Crown in connection with the affairs of the Governor-General or Governor-General in Council or of a Province other than Bengal or the Punjab shall, as from that day, be deemed to have been duly appointed to the corresponding post under the Crown in connec-

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tion with the affairs of the Dominion of India or, as the case may be, of the Province."

Reading this provision along with the provision in s. 10 of the Indian Independence Act, it would in our opinion be right to say that so far as the members of the former Secretary of State's Services are concerned they must be deemed to have been appointed to the posts on which they were serving at the time of conferral of Independence, by the Government of India. The deemed appointment under Art. 7 (1) of G.G.O. 14 was "subject to any general or special orders or arrangements affecting his case", and these arrangements are clear from the correspondence which ensued between the Government of India and His Majesty's Government. That correspondence and the special orders or arrangements contemplated by Art. 7 (1) of G.G.O. 14 show that so far as the members of the former Secretary of State's Services were concerned, it was the Government of India which took the final decision whether to continue such officers or not. It is true that in so doing it consulted the various Provincial Governments and was to a large extent guided by the views of the Provincial Governments, particularly in connection with such officers who were serving in connection with the affairs of the Provinces; even so, as the facts in *Rajagopalan's case*[1] show, the final decision whether to continue or not a member of the former Secretary of State's Services was taken by the Government of India. In these circumstances it would in our opinion be reasonable to hold that in the case of the members of the former Secretary of State's Services it was the Government of India which must be deemed to have appointed them after the conferral of Independence on India to the respective posts which they were holding whether under the Government of India or under the Governments of Provinces. This conclusion is reinfored by the fact that the system in force before 1947 was that all members of the Secretary of State's Services were assigned to one Province or other and from them such members as were necessary used to be on deputation to the Government of India for serving it directly. It would be very anomalous

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indeed that the accident whether an officer was serving on August 13, 1947, on deputation under the Government of India directly or in the Province to which he was assigned should determine who the appointing authority must be deemed to be on the date of the transfer of power. Such an anomaly could in our opinion never have been intended and we have no doubt therefore in view of the history dealt with in *Rajagopalan's case*[1] that on the conferral of Independence, even if there was legal termination of the services of members of the former Secretary of State's Services, the reappointment must be deemed to be by the Government of India and not by the Governors of Provinces even in the case of officers who were serving in connection with the affairs of Provinces.

In this connection our attention has been drawn to s. 241 (1) of the Government of India Act 1935 as it then stood, which is in these terms:—

> "(1)—Except as expressly provided by this Act, appointments to the civil services of, and civil posts under, the Crown in India, shall be made—
>
> (a) in the case of services of the Dominion, and posts in connection with the affairs of the Dominion, by the Governor-General or such person as he may direct;
>
> (b) in the case of services of a Province, and posts in connection with the affairs of a Province, by the Governor or such person as he may direct."

This provision in our opinion does not apply in the peculiar circumstances arising out of the transfer of power in August 1947. It is a general provision relating to appointments to civil services and civil posts under the Dominion or under the Provinces. It has in our opinion nothing to do with the case of members of the civil services and holders of civil posts who were deemed to have continued by virtue of Art. 7 of G.G.O. 14 of August 14, 1947. Clause (b) of s. 241 (1) therefore cannot in our opinion lead to the inference that in the case of those members of the former Secretary of State's

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Services who were deemed to have been appointed in connection with the affairs of a Province under Art. 7 (1) of G.G.O. 14, the appointments must be deemed to have been made by the Governor. Such deemed appointments in our opinion must depend for their validity on Art. 7 of G.G.O.14 and not on s. 241 of the Government of India Act which is not a deeming provision and therefore we have to look to Art. 7 (1) to find out by whom the appointments must be deemed to have been made in the case of the members of the former Secretary of State's Services. As Art. 7 opens with the words "subject to any general or special orders or arrangements affecting his case" (*i.e.* each individual officer's case), it must be held in view of the history which is elaborately set out in *Rajagopalan's case*(1) that so far as members of the former Secretary of State's Services were concerned, it was the Government of India who must be deemed to have made the appointments in view of the special orders and arrangements with respect to such officers.

Reliance in this connection was also placed on the amendment of s. 240 (2) of the Government of India Act by the same G.G.O. Section 240 (2) as it originally stood provided that "no such person as aforesaid (meaning thereby a member of a civil service of the Crown in India or a person holding any civil post under the Crown in India) shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed". Amendment of this sub-section became necessary as the Secretary of State for India was disappearing and some authority had to be provided which could dismiss members of the former Secretary of State's Services. G.G.O. 14 therefore provided that no member of a Secretary of State's Services who continued in service after August 14, 1947, shall be dismissed by any authority subordinate to the Governor-General or the Governor according as that person was serving in connection with the affairs of the Dominion or of a Province. This amendment gave power to the Governor to dismiss even members of the former Secretary of State's Services and stress has been laid on behalf of

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the respondent on this amendment and it is urged that this shows that appointments of such members who were serving in connection with the affairs of the Provinces must be deemed to have been made by the Governor concerned. It appears however that the amendment by which the Governor could dismiss a member of the former Secretary of State's Services may have crept in by inadvertence, for it would *prima facie* be against the provisions of the guarantee contained in s.10 of the Indian Independence Act. In any case this sub-section was further amended by G.G.O. 34 and the power of dismissal was only vested in the Governor-General and was taken away from the Governor. We are therefore of opinion that no inference can be drawn from the fact that for a short time s. 240 (2) provided that the Governor may dismiss a member of the former Secretary of State's Services, that the appointments of such members who were serving in connection with the affairs of the Province was by the Governor, and not by the Government of India. Such an inference is in our opinion against the conclusion which can be plainly drawn from the history relating to the continuance and appointment of the members of the former Secretary of State's Services at the time of conferral of Independence and the provisions of Art. 7 (1) of G.G.O. 14 of August 14, 1947.

The final position therefore on January 25, 1950, with respect to suspension of a member of the former Secretary of State's Services whether as a punishment or as an interim measure pending departmental enquiry or pending a criminal proceeding was this. Such member could be suspended under the general law by the appointing authority, which in the changed circumstances was the Government of India, as an interim measure pending a departmental enquiry or pending a criminal proceeding, but there was no power in any other authority to pass such an order of interim suspension, for as we have already indicated the power under s. 247 (2) was repealed by G.G.O.14 of August 14, 1947. Besides this power of interim suspension otherwise than as a punishment, the power to suspend

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as punishment continued under r. 49 of the Appeal Rules and an order of suspension made in exercise of that power was subject to appeal under r. 56 etc., thereof. So far as payment during the period of interim suspension or during the period of suspension as a penalty is concerned, s. 247 (3) had disappeared and therefore the general provision contained in F.R. 53 applied. That general provision has made some distinction between the members of the Indian Civil Service and others; but that is a matter of detail, in which it is unnecessary to go. So the position immediately before the commencement of the Constitution was that members of the former Secretary of State's Services could be suspended either as an interim measure pending departmental enquiry or pending criminal proceeding or as a punishment. Where suspension was as an interim measure and not as a punishment such suspension could only be by the appointing authority, which in the changed circumstances should be deemed to be the Government of India. Such interim suspension was not subject to any appeal. So far as suspension as a punishment was concerned, r. 49 of the Appeal Rules applied and the authorities specified in these Rules could pass an order of suspension as a punishment and that order would be subject to appeal provided in r. 56 and other rules therein. As to the payment during the period of suspension that was governed by F.R. 53. It is this position which was protected by Art. 314 of the Constitution so far as suspension of members of the former Secretary of State's Services was concerned whether as an interim measure or as a punishment.

Then we come to the Discipline Rules 1955. Rule 3 of these Rules provides for penalties and omits suspension as a penalty. Now if suspension had remained a penalty under r. 3 of the Discipline Rules, the appellant would have been entitled to the same rights as respects suspension as a punishment or rights as similar thereto as changed circumstances would permit in view of Art. 314. But r. 3 of the Discipline Rules has altogether done away with the penalty of suspension for members of

the Indian Administrative Service, which includes the members of the Indian Civil Service under r. 3 (a) and (b) of the Recruitment Rules. Further rules corresponding to the Discipline Rules was repealed by r. 23 of the Discipline Rules; so after the Discipline Rules came into force in 1955 suspension could no longer be inflicted as a penalty on a member of the Indian Administrative Service (including members of the Indian Civil Service who became members of the Indian Administrative Service). It is therefore unnecessary for us to consider whether the order of July 18, 1959, can be justified as a punishment and if so whether the memorial provided by r. 20 of the Rules is a sufficient protection for the purpose of Art. 314 which speaks of "rights as similar thereto as changed circumstances may permit". Nor is it the case of the respondent that the appellant was suspended by way of punishment by the order of July 18, 1959. The respondent justifies the said order under r. 7 (3) of the Discipline Rules and thus the case of the respondent is that the appellant was suspended not as a punishment but that the order of suspension was passed by the Governor as an interim measure which he could do either pending a departmental enquiry or pending a criminal charge. The appellant has thus been suspended by the order of July 18, 1959, not as a punishment but as an interim measure pending a criminal charge against him; and this is what practically in terms the order says, for it places the appellant immediately under suspension because a criminal case was pending against him. But as we have already pointed out the power to pass an order of interim suspension in the case of a member of the former Secretary of State's Services on January 25, 1950, was only in the appointing authority, (namely, the Government of India). The power to suspend a member of the Indian Administrative Service which the appellant became by virtue of r. 3 of the Recruitment Rules as punishment has disappeared from r. 3 of the Discipline Rules 1955. The appellant therefore could not be suspended by the Governor as an interim measure and such suspension could only be by the Government of India. The proper procedure therefore in a case

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where the State Government wants a member of the former Secretary of State's Services to be suspended pending departmental enquiry or pending investigation, inquiry or trial of a criminal charge against him is to approach the Government of India and ask it as the appointing authority to suspend such officer as an interim measure. It is not open to the Government of India by framing a rule like r. 7 of the Discipline Rules to take away the guarantee as to Disciplinary matters contained in Art. 314. We have already said that the guarantee in the case of a member of the former Secretary of State's Services is that in disciplinary matters his rights would be the same or as similar thereto as changed circumstances would permit as they were immediately before the commencement of the constitution. The right in the matter of interim suspension as distinct from suspension as a punishment was that a member of the former Secretary of State's Services could not be suspended by any authority other than the Government of India. That was guaranteed by art. 314 and could not be taken away by framing a rule like r. 7 of the Discipline Rules. We have already referred to *Bakshi's case*[1] in which it has been held that the rights guaranteed by Art. 314 of the Constitution could not be destroyed or taken away by the Central Government in exercise of its rule-making power. In the present case the right guaranteed to a member of the former Secretary of State's Services with respect to interim suspension (as distinct from suspension as a punishment is that such a member cannot be so suspended except by the appointing authority which in the changed circumstances is the Government of India. That right has in our opinion been violated by r. 7 of the Discipline Rules insofar as it permits any authority other than the Government of India to suspend pending a departmental enquiry or pending a criminal charge a public servant who was a member of the former Secretary of State's Services. Rule 7 therefore insofar as it permits this violation of the guarantee contained in Art. 314 with respect to interim suspension (other than suspension

(1) [1962] Supp. 1 S.C.R. 505.

as a punishment) is to that extent *ultra vires* Art. 314 *i.e.* insofar as it applies to the members of the Indian Administrative Service who fall within cls. (a) and (b) of r. 3 of the Recruitment Rules. It follows therefore that the order of the Governor dated July 18, 1959, purporting to be passed under r. 7 (3) of the Discipline Rules is without authority and must be set aside.

This brings us to the question of relief to be granted to the appellant. It appears that on September 11, 1963, the Governor passed an order by which he reinstated the appellant for the period from July 18, 1959, to April 4, 1963, and granted him his full emoluments for that period. The writ petition in the present case was filed in February 1962. So the appellant is apparently not entitled to any further relief in the matter of his emoluments besides what has been granted to him by the Governor. The order of reinstatement contained therein is unnecessary in view of our decision and the order granting full emoluments may be taken to be in pursuance of our judgment.

We therefore allow the appeal and declare r. 7 of the Discipline Rules insofar as it applies to members of the Indian Administrative Service who are members thereof by virtue of r. 3 (a) and (b) of the Recruitment Rules to be bad to the extent to which it permits an authority other than the Government of India to suspend as an interim measure (and not as a punishment) such members of the Services. In consequence we set aside the order of the Governor dated July 18, 1959. As however the order of September, 1963, has granted all such monetary reliefs to the appellant as we could grant him on setting aside the order of July 18, 1959, no further relief can be granted to the appellant. We order the respondent the State of Punjab to pay the costs of the appellant in this Court as well as in the High Court.

RAGHUBAR DAYAL J.—I am of opinion that this appeal should be dismissed. *Raghubar Daya. J.*

The appellant, a member of the Indian Civil Service, was serving under the Government of Madras immediately before the 'appointed day', *i.e.* August 15,

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1947, as laid down in sub-s. (2) of s. 1 of the Indian Independence Act, 1947 (10 & 11 Geo. 6, Ch. 30) hereinafter referred to as the Independence Act. He continued to serve under the Government of Madras on and after the appointed day. Subsequently, he was transferred to the State of Punjab where he was serving on July 18, 1959, when he was suspended by the Governor of Punjab as a criminal case was pending against him. The appellant was a member of the Indian Administrative Service in 1959 and the order of suspension appears to have been made by the Governor in exercise of the power conferred by r. 7 of the All India Services (Discipline and Appeal) Rules, 1955, hereinafter referred to as the Discipline Rules. The appellant challenges the validity of this order on the ground that this rule violates the provisions of art. 314 of the Constitution. His contention is that prior to August 15, 1947, a member of the Indian Civil Service could be suspended by way of punishment in view of r. 49 of the Civil Services (Classification, Control and Appeal) Rules, hereinafter referred to as the Classification Rules and that there was no provision for his suspension otherwise than as a penalty and that his suspension, as a disciplinary measure, though permissible, would have been then treated as suspension by way of penalty and therefore as subject to an apeal under r. 56 of the Classification Rules. No appeal is provided under the Discipline Rules against an order of suspension under r. 7 which therefore violates art. 314 of the Constitution as, according to that article, he was entitled to receive from the Government the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances, permitted as he was entitled to immediately before the commencement of the Constitution. He further contends that sub-s. (2) of s. 10 of the Independence Act guaranteed to him the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances permitted, as he was entitled to immediately before the appointed day.

It was further contended, during the course of the submissions in Court, that though prior to the appoin-

ted day an order of suspension during the pendency of a departmental enquiry or of a criminal charge could have been made only by the Governor-General or the Governor, such an order thereafter and till January 26, 1950 could be made only by the Governor-General, and that therefore such a suspension order subsequent to the commencement of the Constitution could be made by the Union Government and not by the Government of Punjab and that for this reason too, r. 7 of the Discipline Rules empowering the State Government to make an order of such suspension violates art. 314.

I need not discuss the various points on which I agree with my learned brother Wanchoo, J. I agree that the expression 'changed circumstances' in art. 314 only refer to the constitutional changes which occurred after the transfer of power in August, 1947, and the coming into force of the Constitution in January, 1950, that suspension during the pendency of disciplinary proceedings or of a criminal charge is related to disciplinary matters within the meaning of those words in art. 314, that from the appointed day there was no express provision in the Government of India Act or in the rules framed thereunder empowering the Governor-General or the Governor to suspend, otherwise as penalty, officers appointed by the Secretary of State for India and that any order of suspension pending enquiry against a person appointed by the Secretary of State on a day immediately before the coming into force of the Constitution had to be made by the Government in the exercise of the general power of suspension which an employer has with respect to his employee, that this general power an employer has to suspend an employee pending an enquiry into his conduct vests in the appropriate authority where the Government is the employer and a public servant is the employee and that such an authority in the case of Government, in view of the peculiar structure of the hierarchy of Government, be taken to be the authority which has the power to appoint the public servant concerned. I am however. further of opinion that the appropriate authority in this connection can also include officers superior to

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the appointing authority and that in the case of members of All India Services serving under any state includes the Governor who, as the executive head of State, has administrative control cover all officers serving under the State Government. It would be anomalous to hold that the Governor could not suspend a person, appointed by the Secretary of State, during the pendency of departmental proceedings or a criminal charge against him, though he could have imposed a penalty of suspension on such a person in view of rr. 49 and 62 of the Classification Rules which were in force between the appointed day and January 25, 1950, and continued in force subsequently, up to the coming into force of the Discipline rules. I, however, do not rest my decision on this view as, in my view, the appellant is to be deemed to have been appointed by the Governor of Madras, on the appointed day, to the post corresponding to the post he was holding immediately before the appointed day under the Madras Government.

I now deal with the question of the authority which should be taken to be the appointing authority for persons who had been appointed by the Secretary of State to the Civil Services or to any post under the Crown and who continued to serve the Government after the appointed day. To determine this question it is necessary to consider the following matters: (1) Did the Service known as the Indian Civil Service, whose members were to be recruited by the Secretary of State for India in view of s. 244 (1) of the Government of India Act, cease to exist on and from the appointed day and, if so, whether any other All India Service took its place immediately after it had ceased to exist? (2) If it ceased to exist, were the services of the members of the Indian Civil Service terminated immediately before the appointed day? (3) Which members of the Service continued in service of the Government on or after the appointed day. (4) Whether those who so continued did so on account of their becoming servants of the new Government under the provisions of any Act, or their continuance in service was on account of their fresh appointment. (5) If it was due to fresh

appointment, which authority appointed them and to which post or service .

Before I deal with the above questions, I may set out the relevant provisions which have a bearing in this connection. The Independence Act was enacted by the British Parliament on July 18, 1947, for setting up in India two independent Dominions and to provide for necessary consequential matters. By sub-s. (1) of s. 1, two independent Dominions known as India and Pakistan were to be set up from August 15, 1947. Sub-section (2) of that section provided for their being referred to as the new Dominions and August 15, 1947, being referred to as the appointed day. One of the consequences of the setting up of the new Dominions was stated in sub-s. (1) of s. 7 to be that His Majesty's Government in the United Kingdom was to have no responsibility as respects the government of any of the territories which, immediately before the appointed day, were included in British India. Section 9 empowered the Governor-General to make such provisions by order as appeared to him to be necessary or expedient for certain purposes mentioned therein. Sub-sections (1) and (2) of s. 10 of the Act read:

> "(1) The provisions of this Act keeping in force provisions of the Government of India Act, 1935, shall not continue in force the provisions of that Act relating to appointments to the civil services of, and civil posts under, the Crown in India by the Secretary of State, or the provisions of that Act relating to the reservation of posts.
>
> (2) Every person who—
>
> (a) having been appointed by the Secretary of State, or Secretary of State in Council, to a civil service of the Crown in India continues on and after the appointed day to serve under the Government of either of the new Dominions or of any Province or part thereof; or
>
> (b) having been appointed by His Majesty before the appointed day to be a judge of the Federal

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Court or of any court which is a High Court within the meaning of the Government of India Act, 1935, continues on and after the appointed day to serve as a judge in either of the new Dominions, shall be entitled to receive from the Governments of the Dominions and Provinces or parts which he is from time to time serving or, as the case may be, which are served by the courts in which he is from time to time a judge, the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters or, as the case may be, as respects the tenure of his office, or rights as similar thereto as changed circumstances may permit, as that person was entitled to immediately before the appointed day".

The Governor-General, in the exercise of the powers conferred on him by s. 9 made the India (Provisional Constitution) Order, 1947 (G.G.O. 14 of 1947), hereinafter called the Provisional Constitution Order. Article 7(1) of this Order is:

"Subject to any general or special orders or arrangements affecting his case, any person who immediately before the appointed day is holding any civil post under the Crown in connection with the affairs of the Governor-General or Governor-General in Council or of a province other than Bengal or the Punjab shall, as from that day, be deemed to have been duly appointed to the corresponding post under the Crown in connection with the affairs of the Dominion of India or, as the case may be, of the Province."

Sub-section (1) of s. 241 of the Government of India Act, as modified by this Order, reads:

"Except as expressly provided by this Act, appointments to the civil services of, and civil posts under, the Crown in India, shall be made—

(a) in the case of services of the Dominion, and posts in connection with the affairs of the

Dominion, by the Governor-General or such person as he may direct;

(b) in the case of services of a Province, and posts in connection with the affairs of a Province, by the Governor or such person as he may direct."

Section 247 of the Government of India Act as modified reads:

"The conditions of service of all persons who, having been appointed by the Secretary of State or the Secretary of State in Council to a civil service of the Crown in India, continue on and after the date of the establishment of the Dominion to serve under the Government of the Dominion or of any Province shall,—

(a) as respects persons serving in connection with the affairs of the Dominion be such as may be prescribed by rules made by the Governor-General;

(b) as respects persons serving in connection with the affairs of a Province—

(i) in regard to their pay, leave, pensions, general rights as to medical attendance and any other matter which immediately before the establishment of the Dominion was regulated by rules made by the Secretary of State, be such as may be prescribed by rules made by the Governor-General; and

(ii) in regard to any other matter be such as may be prescribed by rules made by the Governor of the Province."

Sections 244 to 246 of the Government of India Act, 1935, which dealt with Services recruited by the Secretary of State was omitted from the Act by this Order.

Reference may also be made to the announcement by His Excellency the Viceroy on April 30, 1947. It purported to relate to grant of compensation for premature termination of their service in India to members of the Civil Services appointed by the Secre-

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tary of State and to regular officers and British Warrant Officers of the Indian Naval and Military Forces. Its first 7 paragraphs are set out at pp. 548 to 550 in *State of Madras* v. *K.M. Rajagopalan*(1). Its para 8 stated *inter alia*:

> "In pursuance of their wish to give all possible help to the Government of India in building up the new services, His Majesty's Government agree that their obligation covers the claim to ultimate compensation of those British members of the Services who are asked to serve on in India and decide to do so."

It may also be mentioned that subsequent to June 3, 1947, the Government of India made enquiries through the Provincial Governments from the members of the Secretary of State's Services, including the Indian Civil Service, about their desire to continue in service of the Government after the transfer of power and also made enquiries from the Provincial Governments themselves about their readiness to retain those officers in service who expressed their desire to continue in service.

This Court had occasion to discuss the effect of the steps taken by the Government of India prior to the appointed day and of the provisions of the Independence Act and the Provisional Constitution Order in *Rajagopalan's case*(1) Rajagopalan was a member of the Indian Civil Service and was serving in the Province of Madras till August 14, 1947, when his services were terminated, though he had expressed his willingness to continue in the service of the Government of Madras on and after the appointed day. What this Court directly held and observed in connection with the points urged before it in that case would be mentioned at appropriate places in discussing the five points I have formulated earlier.

This first two points were directly decided in that case. This Court held that the Secretary of State and his Services disappeared as from the appoin-

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ted day and that s. 10(2) of the Independence Act and art. 7(1) of the Provisional Constitution Order proceeded on a clear and unequivocal recognition of the validity of the various special orders and the individual arrangements made and amounted to an implicit statutory recognition of the principle of automatic termination of the Services brought about by the political change. It is clear therefore that the Indian Civil Service, one of the Secretary of State's Services, ceased to exist from the appointed day and that the services of its members automatically terminated on August 14, 1947.

This Court had not to consider whether any All India Service was set up to take the place of the Indian Civil Service on and from the appointed day, as the termination of Rajagopalan's services was held to be valid. There is nothing on the record to show that any such new Service took the place of the Indian Civil Service at the changeover, though, subsequently, the Indian Administrative Service was set up as an All India Service. When it was actually set up is not known. Article 312 of the Constitution states in cl. (2) that the Services known at the commencement of the Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under that article. The All India Services Act, 1951 (Act LXI of 1951) defined an All India Service to mean the service known as the Indian Administrative Service or the service known as the Indian Police Service. The Indian Administrative Service Recruitment Rules, 1954, came into force in 1954 and its r. 3 dealing with the constitution of the service provides *inter alia* that the Service shall consist of (a) members of the Indian Civil Service, not permanently allotted to the judiciary; (b) members of the Indian Civil Service permanently allotted to the judiciary who have been holding executive posts from the date of commencement of the Constitution; (d) persons recruited to the Service before the commencement of those Rules. It appears therefore that all the

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members of the Indian Civil Service who continued to serve the Government on and after the appointed day were not made members of the Indian Administrative Service and that those who were made members of the Service became members of such Service in 1954. If the Indian Administrative Service had been set up to replace the Indian Civil Service immediately on the appointed day and the erstwhile members of the Indian Civil Service had become its members, the provisions of r. 3 (a) and (b) would have been different from what they are. This indicates that the Indian Administrative Service did not take the place of the Indian Civil Service automatically after the changeover on the appointed day and that therefore the members of the Indian Civil Service who continued in service did not continue so as members of any All India Service. The Viceroy's announcement dated April 30, 1947, makes no mention of any All India Service replacing the Indian Civil Service immediately on the transfer of power though it specifically mentioned in para 8 about the giving of all possible help to the Government of India in building up the new Services and to the members of the Secretary of State's Services continuing to serve under the Government in India after the transfer of power. The provisions of art. 7(1) of the Provisional Constitution Order also do not refer to the persons in the Secretary of State's Services to continue in service as members of any All India Service though it specifically deals with the appointment of such other employees of Government to the posts they had held on the day immediately preceding the appointed day.

I am therefore of opinion that the service of the appellant as a member of the Indian Civil Service came to an end on August 14, 1947, and that thereafter he did not automatically or otherwise become member of any All India Service on August 15, 1947.

In connection with point no. 3 formulated by me, this Court said in *Rajagopalan's case*[1] at p. 552

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that the continuance of service was contemplated only in respect of such of the previous servants who intimated their desire for the continuance of their services and whose offer in that respect was accepted, and at p. 563 that sub-s. (2) of s. 10 of the Independence Act had nothing to say as to who were the persons who would continue in service and receive the benefit that being obviously left to be provided by delegated legislation in the shape of Orders of the Governor-General and at p. 565 that in view of the provisions of art. 7(1) of the Provisional Constitution Order, all persons who were previously holding civil posts were deemed to have been appointed and hence to continue in service excepting those whose case was governed by general or special orders or arrangements affecting their cases. It is clear therefore that only those members of the Secretary of State's Services continued in service who had been holding civil posts immediately before the appointed day and were deemed to have been appointed to the corresponding post in view of the provisions of art. 7 (1) of the Provisional Constitution Order.

The persons who had been holding civil posts immediately before the appointed day did not automatically become servants of the new Government on the appointed day. Article 7(1) of the Provisional Constitution Order contemplates 'deemed appointment' of such persons to their respective posts on that day. The language of this article is not consistent with any suggestion that they automatically, by the force of the Independence Act or the Provisional Constitution Order, became holders of the respective posts on the appointed day. The language is very much different from the language used in Arts. 374, 376, 377 and 378 of the Constitution which provide for certain persons holding office immediately before the commencement of the Constitution becoming, on such commencement, holders of corresponding posts on such commencement. The language is also different from that of Art. 375 of the Constitution which deals with the continuance of courts, authorities

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and officers after the commencement of the Constitution and reads:

> "All courts of civil, criminal and revenue jurisdiction, all authorities and all officers, judicial, executive and ministerial, throughout the territory of India, shall continue to exercise their respective functions subject to the provisions of this Constitution."

There is no such expression in this article which would indicate that any of these officers had to be freshly appointed or would be deemed to have been appointed to their respective posts on the commencement of the Constitution.

The language of art. 7(1) of the Provisional Constitution Order correspond to some extent to that of s. 58 of 21 & 22 Vic. Cap. CVI, 1858, an Act for the better Government of India, which was passed when the Government of India was transferred to Her Majesty from the East India Company. Section 58 reads:

> "All persons who at the time of the commencement of this Act shall hold any offices, employments, or commissions whatever under the said Company in India shall thenceforth be deemed to hold such offices, employments, and commissions under Her Majesty as if they had been appointed under this Act....."

The language of art. 7(1) of the Provisional Constitution Order, for purposes of comparison, may be just noted, and is

> "....any person who immediately before the appointed day is holding any civil post under the Crown....shall, as from that day, be deemed to have been duly appointed to the corresponding post under the Crown...."

The language of s. 58 of the 1858 Act contemplated a fresh appointment, though deemed appointment, as is abundantly clear from the words 'shall....be deemed to hold such offices, employments, and com-

missions....as if they had been appointed under this Act....'.

I am therefore of opinion that the Provisional Constitution Order, by its art. 7(1), provided for deemed fresh appointment of the members of the Secretary of State's Services whose services had terminated automatically on the day immediately preceding the appointed day.

I will now deal with the last point as to which authority would be deemed to have appointed the persons who had been in the Secretary of State's Services, to their corresponding posts on the appointed day.

The Government of India Act, 1935, hereinafter called the Act, as modified by the Orders of the Governor-General, was in force on that day and the authorities competent to make appointments on that day would be deemed to have made the appointments of the erstwhile servants in the Secretary of State's Services. No other authority could have made those appointments and therefore no other authorities could be deemed to have made those appointments which were deemed to be made in view of the provisions of art. 7(1) of the Provisional Constitution Order.

Section 241 of the Act provided that the Governor-General, or such person as he may direct, would make appointments to the civil services of the Dominion and civil posts in connection with the affairs of the Dominion and that the Governor would make appointments to the services of a Province and posts in connection with the affairs of a Province. Such persons of the Secretary of State's Services who were holding posts in connection with the affairs of a Province would therefore be appointed to the corresponding posts, on the appointed day, by the Governor of that Province, as only he could have made appointments to those posts. It is to be noticed that art. 7(1) of the Provisional Constitution Order refers to appointments to posts and not to appointments to Services and that even prior to the appointed day the appoint-

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ments, to the various posts in the Provinces, of members of All India Services allotted to the cadre of the Provinces were also made by the Governor and not by the Governor-General. In this respect, with regard to all appointments to posts in connection with the affairs of the Provinces there had been really no change.

It is contended for the appellant that his deemed appointment to the post corresponding to the post he had held on August 14, 1947, was by the Governor-General or the Government of India. Article 7(1) of the Provisional Constitution Order does not expressly provide so. Section 241 of the Act did not authorize the Governor-General to make appointments to posts in connection with the affairs of the Provinces. The provisions of art. 7(1) of the Provisional Constitution Order refer to all the persons employed in the civil services and holding civil posts under the Crown and are not restricted to those persons only who held posts and had been appointed by the Secretary of State. The mere fact that the Provisional Constitution Order was made by the Governor-General would not lead to the result that the deemed appointments of all the persons serving under the Crown, whether as members of civil services or as holders of posts, had been made by the Governor-General. That could not have been intended. All such employees would be deemed to be appointed by the appropriate authority on the appointed day and the appropriate authority for the appointment of a particular employee is to be found in s. 241 of the Act.

It is also true that the erstwhile members of the Secretary of State's Services were not actually reappointed by the appropriate appointing authority and that they were merely deemed to be so appointed in view of the provisions of art. 7(1) of the Provisional Constitution Order whose purpose was to validate the continuity of the service of such persons even though they had not been actually appointed.

I see no reason why the provisions of s. 241 of the Act be not applicable to the deemed appoint-

ments of such persons who had been in the Secretary of State's Services. Undoubtedly, it was not a special provision for the deemed appointments at the particular occasion, but was of general application to appointments on and after the appointed day. Appointments, whether actual or deemed to be made by the new Governments immediately on the changeover of the Government, must be governed by its provisions.

This Court did not make any reference to s. 241 of the Act in *Rajagopalan's Case*.[1] This is not because that section did not govern all the erstwhile members of the Secretary of State's Services, but because the Court was not concerned in that case with the question of such fresh deemed appointments as Rajagopalan did not continue in service as his services were held to be validly terminated on August 14, 1947.

It has been urged in support of the appellant's case that the retention of persons of the Secretary of State's Services was dealt with between the Government of India and His Majesty's Government as would appear from the various documents in connection with the steps taken for the setting up of the two Dominions and that only those officers continued in service whom the Government of India invited to continue and that those who were not so invited were to be paid compensation.

It is not clear from the antecedent circumstances that it was the Government of India which decided about the continuance in service of such officers of the Secretary of State's Services who had been prior to the changeover serving under the Government of a Province. Even if it was the Government of India which was to decide and invite the officers to continue, such a decision and invitation cannot amount to its appointing those officers to the various posts in connection with the affairs of a Province, in view of s. 241 of the Act.

Of course, negotiations with respect to the services took place between the Government of India

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and His Majesty's Government. A Provincial Government could not have continued such negotiations. I do not find any specific mention in any of the documents referred to in *Rajagopalan's Case*[1] to the effect that it was the Government of India which decided which officers were to continue in service. The Viceroy's announcement dated April 30, 1947, practically sums up the result of the negotiations between the Government of India and His Majesty's Government. It is clear from what was stated in paragraphs 3 and 6 of this announcement that the undertakings and assurances with respect to persons appointed by the Secretary of State and who were to continue in service were given by the Government of India with respect to those who were to continue under its service and by the Provincial Governments with respect to those who would join the Provincial Services. It is said in para 3, which dealt with the terms of pay etc., that the Government of India would then propose to Provincial Governments that they should give similar assurances to members of the Secretary of State's Services who agreed to join Provincial Services.

It was said in para 6 :

> "His Majesty's Government have been reviewing the whole position. They have noted the undertaking which the Government of India have given in regard to officers whom they desire should continue to serve under the Government of India....Many Indian members of the Secretary of State's services will however become members of provincial services and in their cases His Majesty's Government's agreement that they need not be compensated is conditional upon the Provincial Governments guaranteeing the existing terms of service. If they are not prepared to do so His Majesty's Government reserve the right to reconsider the matter.

It is therefore clear that the Provincial Governments were also concerned in the negotiations though they were actually made by the Government

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of India and had to agree to guarantee the existing terms of service and safeguards in matters of discipline and had also to agree to pay compensation.

It may look anomalous that some persons who had been members of the Secretary of State's Services may be deemed to have been appointed to their respective posts, on the appointed day, by the Governor of a Province if they had been holding posts under the Provincial Government and others be deemed to have been appointed by the Governor-General if they happened to be then serving posts in connection with the affairs of the Government of India or the Dominion. Such an anomaly was bound to come into existence and had been contemplated during the negotiations between the Government of India and His Majesty's Government. There was no other choice open to the members of the Secretary of State's Services who were serving under the Government of a Province when their services automatically came to an end and when they desired to continue in Government service. Their wishes were ascertained in the context of what was taking place. They knew of the announcement by the Viceroy dated April 30, 1947. It was only with their consent that their services were continued after the changeover. They can therefore have no grievance for being appointed to provincial services or posts under the Provincial Governments and naturally, under its administrative control. In fact, even prior to the changeover, such persons had been under the administrative control of the Provincial Government.

This Court, in *Rajagopalan's Case*[1], refers at p. 551 to the Government of India asking the Provincial Governments, by its letter dated June 18, 1947, to state, when forwarding the replies from the individual officers, about their willingness or otherwise to continue in service, whether for any reason they would prefer such officer not to continue in service, notwithstanding his desire to remain in service, and pointing out to the Provincial Government that in case it did not

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desire to retain the services of such persons, the Provincial Government would be incurring the liability to pay compensation. Such an enquiry indicates, to my mind, that the decision to continue such persons in service after the changeover rested with the Provincial Government and it was on this account that it had to bear the liability to the compensation payable to such persons. Such a decision had to be taken by the Provincial Government because it was contemplated that officers serving under the Provincial Government would be appointed to their respective posts after the changeover by that Government itself and that the Government of India will have nothing to do with their appointments. In the circumstances, it follows that it was the Provincial Government which invited such officers to continue in service and not the Government of India.

It is true that the Madras Government informed Rajagopalan of the Government's decision not to retain him in service after August 15, 1947, and stated that a formal communication in that respect would issue from the Government of India. The Government of India in a way approved of the decision of the Madras Government not to continue Rajagopalan in service. But it does not follow that the Government of India's approval was necessary for the Government of Madras to continue under its service officers whom it was prepared to keep in service. The termination of service of such officers was prior to the coming into force of the Act as modified by the Provisional Constitution Order and therefore the termination order had to be formally made by the Government of India. The order had to be passed prior to the changeover and at that time it was proper that any order about the termination of the services be with the approval of the Government of India. The fresh deemed appointment was to be made on August 15, 1947, immediately after the changeover and, in view of the practical difficulties, such a fresh appointment was not actually made but was deemed to have been made, as provided by art. 7(1) of the Provisional

Constitution Order. When the appointment was to be made of persons serving under the Provincial Governments, there was no necessity of obtaining prior approval of the Government of India to retain such officers in service.

I am therefore of opinion that such members of the Secretary of State's Services who were holding posts under a Provincial Government immediately before the appointed day and continued in service on and after the appointed day are to be deemed to be appointed to the corresponding posts by the Governor of the Province, in view of the provisions of s. 241 of the Act.

The appellant was serving under the Madras Government immediately before the appointed day. He will therefore be deemed to be appointed by the Governor of the Province of Madras to the post he was holding on the appointed day. The Governor of the Province was his appointing authority and therefore he could be suspended on the day immediately before the commencement of the Dominion by the Governor of the Province where he might have been then serving. He can at best claim protection of his right of not being suspended pending departmental enquiry or of a criminal charge by any authority of a lower rank. Rule 7 of the Discipline Rules does not provide for such suspension of a person who had been a member of the Secretary of State's Services by an authority lower than the Governor. The appellant was suspended by the Governor of Punjab on July 18, 1959. He had no right of appeal against such an order of suspension. The Discipline Rules did not provide for an appeal against such an order of suspension and, in not so providing, cannot be said to violate the provisions of art. 314 of the Constitution as the appellant had no right of appeal against such an order before the commencement of the Constitution. It follows that r. 7 of the Discipline Rules does not violate the provisions of that Article and that the impugned order of suspension was therefore valid.

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I would therefore dismiss the appeal.

ORDER

In accordance with the opinion of the majority the appeal is allowed with costs in this Court and in the High Court.

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Nov. 19

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CHINTAMANRAO BALAJI AND OTHERS

(A.K. SARKAR, M. HIDAYATULLAH AND J.C. SHAH, JJ.)

Arbitration—Partnership Agreement—Arbitration clause—Formula of valuation on dissolution—Arbitrator appointed by deed of reference—Validity of award questioned—Grounds on which award can be set aside—Error apparent on the face of the records—Arbitrator exceeding jurisdiction—Validity of Award—Severability—Indian Arbitration Act, 1940 (*X of* 1940), *s.* 30.

The appellants and the respondents entered into a partnership in the business of manufacturing *bidis*. Under the agreement a partner was entitled to retire after giving notice of six months to all partners. It contained a clause for reference of disputes between the partners relating to the business or dissolution of the firm to arbitration. It also contained a clause providing how four items including goodwill should be valued. According to this clause goodwill was equal to five years net profits for, debts due to the firm were to be taken not at their book value but at 85% of that value, stocks of raw materials were to be valued at book value and immovable properties were to be valued at their purchase price or their book value. About two years later the appellants desired to retire from the partnership and a deed of reference was executed and a sole arbitrator was appointed. This provided that the remaining partners shall continue the firm and they shall make full payment to the retiring partners of such amounts in such manner and on such conditions as shall be decided upon by the arbitrator. The arbitrator gave the award. He fixed the value of the goodwill of the firm at Rs.32 lakhs including in that amount the "depreciation and appreciation of the property, dead stock and dues to be recovered." The award was filed in the Court under s. 14(2) of the Indian Arbitration Act, 1940.