Gian Singh vs The State Of Punjab on 11 December, 1961

Equivalent citations: 1962 AIR 219, 1962 SCR (3) 515

Author: J.C. Shah

Bench: J.C. Shah, P.B. Gajendragadkar, M. Hidayatullah, Raghubar Dayal

PETITIONER:
GIAN SINGH

Vs.

RESPONDENT:
THE STATE OF PUNJAB

DATE OF JUDGMENT:
11/12/1961

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
GAJENDRAGADKAR, P.B.
SUBBARAO, K.
HIDAYATULLAH, M.
DAYAL, RAGHUBAR

CITATION:
1962 AIR 219 1962 SCR (3) 515

ACT:
Public Servant-Tehsildar in Punjab-Removal from service-Financial Commissioner, if competent to remove-Punjab Land Revenue Act, 1887, s.9-Punjab Tehsildari Rules, 1932-Government of India Act, 1935 (25 & 26 Ged. 5 ch.42),s. 241-Government of India (Comencement and Transitory Provisions) Order, 1936 cl. 15 (2)--Adaptation of Indian Laws Order 1937.

HEADNOTE:
The Punjab Tehsildari Rules, 1932, were framed under s. 9 of the Punjab Land Revenue Act, 1887, by the Financial Commissioner. They conferred authority upon the Financial Commissioner to appoint and to remove Tehsildars from service. After the enactment of the Government of India Act, 1935, s. 9 was amended by the Adaptation of Indian Laws Order, 1937, and the power of the Financial Commissioner to

make such rules was abrogated. The appellant, who was a Tehsildar, was dismissed by the Financial Commissioner in 1953. The appellant contended that the Financial Commissioner was not competent to remove him from service as his powers to make rules regarding appointment and removal from service of Tehsildars were abrogated and the Tehsildari Rules lost their vitality as they were not preserved by the Government of India Act, 1935, or by the Adaptation Order.
Held, (per Gajendragadkar, Subba Rao, Hidayatullah and Shah, JJ., Dayal, J., contra.) that notwithstanding the abrogation of the powers of the Financial Commissioner to frame rules, the Tehsildari rules, 1932 continued in force and the Financial Commissioner was competent to remove the appellant from Service. By the combined operation of cl. 15 (2) of the Government of India (Commencement and Transitory Provisions Order, 1936, and the Adaptation Order, 1937, the condition of service applicable to civil servants remained unaltered, until other provisions were made under the Government of India Act, 1935. Though s. 241 of the Government of India Act,1935 provided that the conditions of service of persons serving in connection with the affairs of a province, were to be such as may be prescribed by rules made by the Governor, or by persons authorised by him, s. 241 was itself Subject to cl. 15(2) of the 1936 Order. It was not shown that
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these rules were superseded or abrogated by the Civil Service Rules made by the Government of Punjab in 1941.
Per, Dayal, J.-The Financial Commissioner was not the competent authority to remove the appellant from service. Section 241 (1) which provided that the Governor would be the appointing and consequently the dismissing authority for all civil servants in the service of the Province abrogated the Tesildari Rules which were inconsistent with it and cl. 15 (2) of the Transitory Order, 1936, did not save them. Even if cl. 15 (2) preserved these Rules, the reference to the Financial Commissioner therein had to be read as reference to the Governor in view of para. 7 of the Adaptation Order. The Civil Service Rules framed by the Government in 1941 governed the conditions of service of Tehsildars and Naib Tehsildars and the Tehsildari Rules ceased to be operative from 1941 even if they continued to be effective till then in view of the provisions of the Transitory Order. From April 1, 1953, the Punjab Civil Service Rules, 1953, were in force which applied to the case and the Financial Commissioner was not shown to be one of the authorities prescribed by the Government in the rules regulating the appointment and conditions of service of Tehsildars and Naib Tehrildars.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 515 of 1960. Appeal from the judgment and order dated September 3, 1958, of the Punjab High Court in Letters Patent Appeal No. 82 of 1957.

Bhagat Singh Chawla and K. R. Choudhri, for the appellant. S. M.. Sikri, Advocate-General for the State of Punjab, Gopal Singh and P. D. Menon, for the respondents. 1961. December II. The Judgment of Gajendragadkar, Subba Rao, Hidayatullah and Shah, JJ., was delivered by SHAH, J.-Sardar Gian Singh-hereinafter Called the appellant- was recruited in 1927 as a Naib Tehsildar in the Revenue department of the Province of Punjab. He was confirmed in that rank in 1939. In 1946, he was promoted to the rank of officiating Tehsildar and was posted as Tehsildar at Hansi in the district of Hissar on September 22, 1947, and since then he held the post of Tehsildar at diverse places.

On August 20 , 1952, the appellant was served with a charge sheet by the Financial Commissioner, Punjab containing eleven heads of charges of, misappropriation, misconduct, irregularities and dereliction of duties committed by him. The Deputy Commissioner, Hissar was appointed to hold a departmental enquiry into those charges. On August 28, 1953, the appellant was served with a notice to show cause why on the findings recorded by the enquiry officer, he should not be dismissed from service. The appellant submitted hi,; explanation. The Financial Commissioner by order dated October 26, 1953 ordered that the appellant be dismissed from service. An appeal preferred against that order was dismissed and application to the Government of Punjab to revise the order of the appellate authority also proved infructuous. The appellant then presented a petition under Art. 226 of the Constitution to the High Court of Punjab for an order quashing the order of dismissal contending inter alia that (a) reasonable opportunity was not given to the appellant either before the enquiry officer or before the Financial Commissioner to rebut the allegations contained in the charge sheet, and (b) that the Financial Commissioner was incompetent to pass the order of dismissal. Bishan Narain, J., who heard the petition rejected the first plea, but in the view of the learned Judge, the Financial Commissioner ceased to have any power to make rules regulating the appointment and dismissal of Tehsildars because of the amendment of the Punjab Land Revenue Act, 1887 by the Government of India (Adaptation of Indian Laws) Order, 1937 and the authority derived by the Financial Commissioner under those rules to dismiss Tehsildars was also abrogated, and therefore the order of the Financial Commissioner dated October 26, 1953 was void and of no effect. In appeal under cl. 10 of the Letters Patent, a Division Bench of the High Court reversed the order passed by the Bishan Narain, J. The High Court held that by virtue of, cls. 9 and 10 of the Government of India (Adaptation of Indian Laws) Order, 1937, the rules framed under the Punjab Land Revenue Act, 1887 continued to remain in operation even after the Act was amended by the Adaptation of Indian Laws Order, 1937 and the Financial Commissioner remained invested with the power to dismiss the appellant from service. The High Court accordingly dismissed the petition of the appellant. The appellant has appealed to this Court against the order of the High Court with certificates of fitness under Art. 133 of the Constitution.

Section 9 of the Punjab Land Revenue Act, 1887, as it was originally enacted, stood as follows :

> "The Provincial Government shall fix the number of Tehsildars and Naib Tehsildars to be appointed, and the Financial Commissioner may make rules for their

appointment and dismissal".

Under s. 9 read with s. 28 of the Act, rules were framed in 1932 by the Financial Commissioner, Punjab, and authority to appoint Tehsildars and to remove them from service was, by these rules, conferred upon the Financial Commissioner. After the enactment of the Government of India Act, 1935, s. 9 of the Punjab Land Revenue Act was amended by the Adaptation of Indian Laws Order, 1937, and the power of the Financial Commissioner to make rules under s. 9 was abrogated by the deletion of the words in that section following the word "appointed". Section 28 which authorised the Financial Commissioner to make rules to regulate appointments, duties, emoluments, punishments etc. of officers amongst others of Kanungos, Zaildars, Inamdars and village officers, was also amended and that power was entrusted to the Provincial Government. Undoubtedly, by the amendment 'of s. 9, the Financial Commissioner was deprived of the power to make rules for appointment and removal of Tehsildars and Naib Tehsildars, and on account of the repeal, except as to transactions past and completed, the power may in the absence of a provision to the contrary, be considered as if it had never existed. But the vitality of the Tehsildari Rules and of the powers of the authorities competent thereunder after the Government of India Act, 1935 was enacted, rested upon certain provisions made by virtue of the authority conferred by that Act. By s.310 of the Act, to facilitate the transition from the Government of India Act, 1915 and from the provisions of Part XIII. of the Act of 1935 to the provisions of Part 11, power was conferred upon His Majesty, by Order-in-Council among others to direct that the provisions of the Government of India Act, 1935, shall, during such limited period as may be specified in the order, have effect subject to such adaptations and modifications as may be so specified. In exercise of this power, on July 3, 1936, the Government of India (Commencement and Transitory Provisions) Order, 1936 was promulgated and by el. 15(2) it was provided:

> "Until other provision is made under the now Act, the conditions of service applicable to any person or any class of persons appointed or to be appointed to serve His Majesty in a civil capacity in India shall be the same as were applicable to that person or, as the case may be, to persons of that class immediately before the commencement of Part III of the new Act."

By el. 12(d) of the Adaptation of Indian Laws Order, 1937 issued in exercise of authority granted by s. 293, it was provided, in so far as it is material, that "No repeal effected by this order shall affect the operation of sub-paragraph (2) of paragraph fifteen of the Government of India, (Commencement and Transitory Provisions) Order, 1936."

By the combined operation of cl. 15(2) of the Commencement and Transitory Provisions Order, 1936 and the Adaptation of Indian Laws Order, 1937, the conditions of service applicable to civil servants continued to remain unaltered, until other provisions were made under the Government of India Act, 1935. Again, the Adaptation of Indian Laws Order, 1937 expressly provided by cl. 9 that the rules framed under the Act-adapted or modified shall not be rendered invalid. By that clause which provided:

> "The provisions of this order which adapt or modify Indian laws so as to alter the manner in which, the authority by which, or the law under or in accordance with which, any powers are exercisable, shall not render invalid any notification, order, commitment, attachment,, bye-law, rule or regulation duly made or issued, or anything duly done, before the commencement of this order ;..... Notwithstanding the abrogation of the powers of the Financial Commissioner to frame rules, the Tehsildari Rules, 1932 remained in force.
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> And by cl. 10 which provided:
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> "Save as provided by this order, all powers which under any law in force in British India, or in any part of British India, were immediately before the commencement of part III of the Government of India Act, 1935 vested in, or exercisable by, any person or authority shall continue to be so vested or exercisable until other provision is made by some legislature or authority empowered to regulate the matter in question."

The authority of the Financial Commissioner under the rules which remained in force by virtue of cl. 9 was exercisable except as provided by the Adaptation of Indian Laws order, 1937. By s. 241 (2) of the Government of India Act, 1935, the conditions of service, in the case of persons serving in connection with the affairs of a Province, were to be such as may be prescribed by rules made by the Governor, or by persons authorised to make rules for that purpose. But this provision was, till other-provisions were made, subject to cl. 15 (2) of the Commencement and Transitory Provisions Order, 1936. Clause 7 of the Adaptation of Indian Laws Order on which reliance was placed by counsel for the appellant in support of his contention that the Governor alone could exercise the powers of dismissal under the Rules because he was the corresponding authority, does not also assist the appellant. The clause applies only to those cases where an authority competent at the date of passing of any Indian law, to exercise any powers or authorities or discharge any functions, ceased to exist and a corresponding new authority was constituted by or under any Part of the Government of India Act, 1935 : the clause did not apply where only the powers of an authority were vested in another authority, the former authority not otherwise ceasing to function. The condition of service of civil servants having remained unaltered even after the Government of India Act, 1935 was brought into operation by virtue of the Commencement and Transitory Provisions Order 1936, and the Adaptation of Indian Laws Order having made express provision saving the rules as well as the authority granted under the rules to the Financial Commissioner, the order of the Financial Commissioner dismissing the appellant from service was not unauthorised.

The contention of counsel for the appellant that by the enactment of s. 241 of the Government of India Act, 1935, civil servants serving a Province could be dismissed after that Act was brought into operation only by the Governor of the Province and by no other authority has therefore no force.

Counsel submitted that in any event, fresh rules governing the civil services in the Punjab having been framed in 1941 by the Government of the Province of Punjab, the Tehsildari Rules, 1932 even if they were not superseded by the amend- ment made by the Adaptation of Indian laws Order, 1937 in the Punjab Land Revenue Act, 1887 stood expressly repealed, and the powers of the Financial

Commissioner to dismiss a Tehsildar could not thereafter, be exercised. But the plea that fresh rules were framed in 1941 in supersession of the Punjab Tesbsildari Rules, 1932 was not advanced in the High Court. In 1941, fresh Civil Services Rules applicable to the Punjab were undoubtedly promulgated; it is however unnecessary to consider whether under the Punjab Civil' Service Rules, 1941 the Governor alone was competent to dismiss from service a public servant of the Provincial Service or subordinate Service or officers holding special posts or any other Government servant or class of Government servants to whom those rules applied. It was expressly enacted in r. 1 4 that the Civil Services Rules were not to apply to any person for whose appointments and conditions of service special provision was made by or under any law for the time being in force. Special provision did in fact exist for the appointments and Condition of service of Tehsildars Under the law for the time being in force and those rules are not shown to have been superseded or abrogated by the Civil Services Rules. Counsel for the appellant asserted that Tehsildars belonged to the Subordinate Services, Class III, and the rules framed in 1941 under s. 241 of the Government of India Act superseded the Tehsildari Rules, of 1932. The Advocate General appearing for the State of Punjab submitted that Tehsildars were not included in the Subordinate Services, because no notification in that behalf was issued. As we have already observed, the question as to the effect of the rules framed in 1941 under s. 241 of the Government of India Act was never raised or argued before Bishan Narain, J., nor before the High Court in appeal. It is difficult for this Court to entertain any plea depending for its adjudications on notifications said to be issued by the Government from time to time, raised for the first time in appeal, when such notifications have never been brought to our notice.

On the whole, we are of the view that the record does not support the contention that the Punjab Tehsildari Rules were not in operation at the date of dismissal. There is also nothing to show that the Financial Commissioner was not invested at the material time with the power to dismiss a Tehsildar.

The appeal therefore fails and is dismissed with costs. RAGHUBAR DAYAL, J.-I regret my inability to agree with the view that the Punjab Tehsildari Rules of 1932 applied to the service of Tehsildars and Naib Tebsildars in 1953. The appellant was an officiating Tehsildar in 1953 in the State of Punjab, when he was dismissed by the Financial Commissioner, Punjab, on October 26, 1953. Having failed to get the order changed as a result of his appeal and a revision to the Government, be field a petition under Art. 226 of the Constitution in the High Court of Punjab and prayed for his reinstatement from the date of his dismissal by the issue of an appropriate writ. Among the grounds in support of his prayer, the petition mentioned that the Financial Commissioner was not competent authority to order the dismissal of a Tehsildar in view of Rule 2.14 of the Punjab Civil Services Rules, (hereinafter called the Civil Services Rules), read with Chapter XV, the Rules being framed under Art. 309 of the Constitution. It was contended on behalf of the State that the petitioner's terms and conditions of service were governed by the Punjab Tehsildari Rules, 1932 (hereinafter called the Tehsildari Rules) which empowered the Financial Commissioner to appoint and dismiss Tehsildars.

Bishan Narain, J., who heard the petition, allowed it holding that the Tehsildari Rules ceased to operate since the amendment of s. 9 of the Punjab Land Revenue Act, 1887 (Act.XVII of 1887), hereinafter called the Revenue Act), by the Government of India (Adaptation of Indian Laws) Order,

1937, (hereinafter called the adaptation Order), which deleted that part of the section which empowered the Financial Commissioner to make rules for the appointment and removal of Tehsildars and Naib Tehsildars, and in'the exercise of which power the Tehsildari Rules had been made by the Financial Commissioner, there being nothing in the Government of India Act, 1935, (hereinafter called the Act) or in the Adaptation Order preserving the validity of these Rules notwithstanding the repeal of the relevant provision in s. 9 of the Revenue Act. He observed in his order :

> "It is nobody's case that the Punjab Civil Service Rules made after the 1935 Act Contain any provision which keeps these rules of 1932 alive and in force. Neither is it the respondent's case that after the amendment of Section 9 of the Punjab Act the Governor or the Provincial Government ever delegated the power of appointments and dismissals of Tehsildars and Naib Tehsildars to the Finan- cial Commissioner."

The Tehsildari Rules, therefore, according to him, being inoperative after the commencement of the Act, could not have become operative under the Constitution, by virtue of the provisions of Art. 372 of the Constitution. Holding that the Civil Services Rules which governed all States services governed the services of Tehsildars and Naib Tehsildars and that nothing in those Rules empowered the Financial Commissioner to appoint or dismiss a Tehsildar, he allowed the petition, ordering that the appellant's dismissal was void and of no legal effects. The State preferred a Letters Patent Appeal. The grounds of appeal mentioned that the Tebsildari Rules were in force on January 25, 1950, in view of ss. 292 and 293 of the Act and also s. 18 (3) of the Indian Independence Act, and thereafter under Art. 372 of the Constitution, and that the finding that the conditions of service of Tehsildars were governed by the Civil Services Rules was wrong. The appellate judgement considered that the Tehsildari Rules were made either in The exercise of the powers conferred by the Government of India Act, 1919, or in the exercise of the powers conferred by the Revenue Act, and came to the conclusion that in the former case they continued to be effective rules in view of s. 276 of the Act, and Art. 313 of the Constitution, it being not shown that those rules had been replaced by another set of rules or those rules were inconsistent with the provisions of the Act or the Constitution and that in the latter case the rules continued to be in force by virtue of paragraphs 9 and 10 of the Adaptation Order which made it clear that the Financial Commissioner who had the power to appoint or dismiss a Tehsildar continued to exercise those powers, those powers having been not abrogated or withdrawn. The Letters Patent Appeal was consequently allowed and the writ petition was dismissed. It is against this order that the appellant has filed this appeal by certificate granted by the High Court.

It is contended for the appellant that the Tehsildari Rules ceased to be operative from the commencement of the Act and in any case, ceased to be operative from the 1st of April 1941 when the Civil Services Rules made by the Governor came into force and that therefore the Financial Commissioner was not competent to dismiss the appellant.

It has not been urged for the respondent in this Court that the Tehsildari Rules were framed under the Government of India Act of 1919 and that therefore they continued to be in force in view of s. 276 of the Act, and Art. 313 of the Constitution. The contention, even if it had been raised, could not

have succeeded, as a Rule empowering ;a Financial Commissioner to appoint and dismiss Tehsildars could not have been consistent with the provisions of s. 241 of the Act which laid down that, except as expressly provided by the Act, appointments to the Civil services or any civil posts under the Crown in India would be made in the case of services of a province and posts in connection with the affairs of a province by the Governor or such persons as he may direct.

It has not been urged before us, that the Government aid, subsequent to the enforcement of the Act pass any order empowering the Financial Commissioner to appoint and dismiss Tehsildars.

The order of the Financial Commissioner was supported on behalf of the State on the provisions of paragraphs 9 and 10 of the Adaptation Order of 1937 and rule 1.4 of the Civil Services Rules, 1941, and at the further hearing, in connec- tion with the effect of paragraph 7 of that Order to which no reference had been made at the first hearing, on the provisions of cl. (2) paragraph 15 of Government of India (Commencement and Transitory Provisions) Order, 1936 (hereinafter called the Transitory, Order), and paragraph 12 of the Adaptation Order. The contention really is that the Tehsildari Rules continued to be valid both in view of paragraphs 9 and 10 of the Adaptation Order and the Transitory Order till such time as the Governor made the new rules and that the Tehsildari Rules continued to be in force after the 1st of April 1941 since the Tehsildars were persons for whose appointment and conditions of service special provision had been made under those rules. I shall first deal with the effect of the provisions of the Adaptation Order on the Tehsildari Rules.

Section 292 of the Act reads "'Notwithstanding the repeal by this Act of the Government of India Act, but subject to the other provisions of this Act, all the law in force in British India immediately before the commencement of part III of this Act shall continue in force in British India until altered or repealed or amended by a competent Legislature or other competent authority." Section 293 of the Act reads "His Majesty may by Order in Council to be made at any time after the passing of this Act provide that, as from such date as may be specified in the Order, any law in force in British India or in any part of British India shall until repealed or amended by a competent Legislature or other competent authority, have effect subject to such adaptations and modifications as appear to His Majesty to be necessary or, expedient for bringing the provisions of that law into accord with the provisions of this Act and, in particular, into accord with the provisions thereof which reconstitute under different names governments and authorities in India and prescribe the distribution of legislative and executive powers between the Federation and the Provinces :

> Provided that no such law as aforesaid shall be made applicable to any Federated State by an Order in Council made under this section. In this section the expression law' does not include an Act of Parliament, but includes any ordinance, Order, bye-law, rule or regulation having in British India the force of law. It is in the exercise of the power conferred by this section that the Adaptation Order was issued. Such provisions of the existing law were to continue in force as were consistent with the Act. Power was vested in His Majesty under s. 293 of the Act to modify the provisions of existing laws in such manner as may be necessary for bringing them into accord with the provisions of the Act and, in parti- cular, to bring them into accord with the provisions of the new Act which reconstituted under different names, governments

> and authorities in India. Paragraph 3 of the Adaptation Order provided that the laws mentioned in the Schedules would have effect subject to the adaptations and modifications directed by those Schedules until they are repealed or amended by a competent authority or by a competent Legislature.
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> Section 9 of the Revenue Act was modified by the Adaptation Order. Before such modifications, it read:
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> "The Provincial Government shall fix the number of Tehsildars and Naib Tehsildars to be appointed and the Financial Commissioner may make rules for their appointment and removal".

The Adaptation Order substituted the word State' for,, the word 'Provincial'. and omitted the words after the word appointed.' It follows that the power of the Financial Commissioner to make rules for the appointment of Tehsildars and Naib Tehsildars did not exist any longer, the provisions for such a power having been repealed by the Adaptation Order. The consequence. of such a repeal is that such a power would be deemed to have never existed in the Financial Commissioner and that the rules framed by him would be deemed to be rules framed without any jurisdiction to make them. This is not really disputed and has the support of the observations in Watson v. Winch(1). The Revenue Act, after amendment, did not provide about the appointment of Tehsildars and Naib Tehsildars. This must have been in view of the statutory provision existing for the purpose in sub- s. 1 of s. 241 of the Act whose relevant portion is:

> "Except as expressly provided by this Act, appointments to the civil services of, and civil posts under, the Crown in India, shall, after the commencement of Part III of this Act, be made:-
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> x x x x x
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> (b) in the case of services of province, and posts in connection with the affairs of a provinces by the Governor or such person as he may direct ."

It is to be noticed that the modifications made by the Adaptation Order to ss. 7 and 8 deleted the provisions empowering the State Government to remove the officers it could appoint under the provisions of those sections.

Paragraph 9 of the Adaptation Order reads:

> "The provisions of this Order which adapt or modify Indian laws so as to alter the manner in which, the authority by, which-, or the law under or in accordance with which, (1) (1916) 1 K. B. 688.

any powers are exercisable, shall not render invalid any notification, order commitment attachment, bye-law, rule or regulation duly made or issued, or anything duly done, before the commencement

of this order; and any such notification, order, commitment, attachment, bye-law, rule, regulation or thing maybe revoked, varied or undone in the like manner to the like extent and in the like circum-

stances as if it had been made, issued or done after the commencement of this Order by the competent authority and under and in accor- dance with the provisions then applicable to such a case."

The Adaptation Order modifies the law under which the Tebsildari Rules were framed. The result of the provisions of paragraph 9 of Adaptation Order is that the Tehsildari Rules were not rendered invalid, and that, for the purpose of revoking, varying or undoing the rules, they were to be deemed to be made under the Act. There is nothing in this paragraph to provide that the rules must continue in the same form in which they exist, even if they were inconsistent with the provisions of the Act. Such could not have been provided by the Adaptation Order and has not been provided. The provisions of this paragraph apply when specified modifications are made by the Order not when the Act itself affects similar provisions of the Indian Law. If something contrary to the rule has already been provided in the act, no further occasion for making that change in the rule by a competent Legislature or authority arises. A subsequent change by a competent authority is contemplated only when no change has already been made in those rules on account of the provisions of the Act. The Tehsildari Rules therefore became inoperative in so far as they provided that the Financial Commissioner could appoint and dismiss Tehsildars and Naib Tehsildars, as such a provision was inconsistent with the provisions of s. 241 of the Act, which vests the power of appointment in the Governor or in any, other person in accordance with his directions. The power of appointment carries with it the power of dismissal.

In Pradyat Kumar v. Chief Justice of Calcutta(1) this Court had to consider whether the Chief Justice of the Calcutta High Court had power to dismiss an employee of the High Court. In this connection, it was not disputed that the Chief Justice was the authority for appointing the appellant. But it was contended that he had not the power to dismiss. The contention was that the appellant was a public servant governed by the Civil Services (Classifica- tion, Control and Appeal) Rules of 1930, as amended from time to time and that those rules continued to apply even after the Government of India Act, 1935, and later when the Constitution of India came into force. It was not disputed that ,dismissal' was a matter falling within "condition of service' of a public servant as held by the Privy, Council in North West Frontier Province v. Suraj Narain Anand(2), and that the power of making rules relating to the conditions of service of staff of the High Court was vested in the Chief Justice of the High Court under s. 242(4) taken with s. 241 of the Act and also under Art. 229(2), of the constitution. It was however contended that the Chief Justice of the High Court had not framed any such rules and that therefore, by virtue of s. 276 of the Act and Art. 313 of the constitution, the Civil Services Rules continued to apply to the appellant. In considering the contention raised, this Court said at page 288 :

> "It will be noticed that cl. 8 (of the Letters Patent of the High Court, 1865, as amended in 1919) specifically vests in the Chief Justice the power of appointment, but makes no mention of the power of removal (1) A.I.R. 1956 &C. 285.

> (2) A.I.R. 1949 PC. 112, or of making regulations or provisions. But it is obvious from the last portion of el. 4 that such power was taken to be implicit under el. 8 and presumably as arising from the power of appointment."

It was again said at the same page in considering the powers of the Supreme Court of Calcutta under the Charter of 1774 "The power of removal or of taking other disciplinary action as regards such appointees was not in terms granted. But there is historical evidence to show that the power of appointment conferred under the Charter was always understood as comprising the above powers. "

> And again, it was said:
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> ,"Thus it is clear that both under the Charter of the Supreme Court as well as under the Letters Patent of the High Court, the power of appointment was throughout understood as vesting in the High Court or the Chief Justice, the complete administrative and disciplinary control over its staff, including the power of dismissal."

It was further said, at page 291:

> ",It must be mentioned, at this stage, that so far as the power of dismissal is concerned, the position under the Constitution of 1950 is not open to any argument or doubt. Article 229(1) which in terms vests the power of appointment in the Chief Justice is equally effective to vest in him the power of dismissal.
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> This results from s. 16, General Clauses Act which, by virtue of Article 367(1) of the Constitution applies to the construction of the word "appointment' in Art. 229(1). Section 16(1) General Clauses Act, clearly. "provides that the power of ,appointment' includes the power to suspend or dismiss'.
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> Paragraph 7 of the Adaptation Order reads:
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> "Subject to the forgoing provisions of this order, any reference by whatever form of words in any Indian Law in force immediately before the commencement of this order to an authority competent at the date of the passing of that law to exercise any powers or authorities, or discharge any functions, in any part of British India shall, where a corresponding new authority has been constituted by or under any Part the Government of India Act, 1935, for the time being in force, have effect until duly repealed or amended as if it were a reference to that new authority."

I am of opinion that in view of paragraph 7 of the Adaptation Order quoted above, reference to to the Financial Commissioner in the Tehsildari Rules dealing with the appointment and removal of Tehsildars and Naib Tehsildars be taken to be a reference to the new authority constituted under the Act for their appointment and dismissal. The authority for appointment and dismissal was the Financial Commissioner. Corresponding new authority, i. e., a now authority which has power to

appoint and dismiss the Tehsildars and Naib Tehsildars, is the Governor, in view of s. 241 of the Act, and therefor-,, reference to the Financial Commissioner in the Rules should be taken to be a reference to the Governor, or to such authority as be appointed by the Governor for the purpose, so long as those rules continued to be in force subsequent to the commencement of part III of the Act, i.e. till they are repealed or amended by new rules. do not agree with the contention for the State that since the office of the Financial Commissioner did continue to exist; the provisions of paragraph 7 of the Adaptation Order cannot be applied. The word 'new' with reference to the authority, does, not necessarily lead to the conclusion that the office in which a particular authority. was vested under the old law must cease to exist and that it is only then that any reference to that old authority would be taken to be a reference to the now authority on which that power is conferred. In my opinion, the expression 'corresponding new authority' means a new authority on which the power which was exercised by the earlier authority had been conferred.

Paragraph 10 of the Adaptation Order reads:

> "Save as provided by this order, all powers which under any law in force in British India, or in any part of British India, were immediately before the commencement of Part III of the Government of India Act, 1935, vested in, or exercisable by any person or authority shall continue to be so vested or exercisable until other provision is made by some legislature or authority empowered to regulate the matter in question."

The only paragraph which has a bearing on the exercise of powers in this Order is paragraph 7. The result of reading paragraphs 7 and 10 together is that if a new authority had been constituted for the exercise of any powers or discharge of any functions, those powers will no more remain vested in the old authority, but when no such corresponding new authority has been constituted, the old authority will continue to exercise those powers till other provision is validly made.

I am therefore of opinion that the provisions of paragraph 10 of the Order are not to be constructed in a way to make the old authority continue to exercise that power, when the Government of India Act itself constitutes another authority for that purpose. If the Adaptation Order be so construed, the adaptation made by the Order would hardly be in furtherance of the provisions of s. 293 of the Act. In this connection I may quote the very apposite observations in Pradyat Kumar v. Chief Justice of Calcutta (1) at page 290 :

> "The continued application of the Civil Services Rules without such adaptation would result in the anomalous position, that although the 1935 Act specifically vests in the Chief Justice the power of appointment and of framing rules regulating conditions, of service including the power of dismissal and hence thereby indicates the Chief Justice as the authority having the power to exercise disciplinary control, he has no such disci- plinary control merely because he did not choose to make any fresh rules and was content with the continued application of the old rules."

The same anomaly would arise under the present case if in spite of the Act vesting the power of appointment and of making rules in the Governor, he be deemed to have lost that power merely

because he did not frame any fresh rules. Section 310 of the Government of India Act, 1935 reads thus :

> "(1) Whereas difficulties may arise in relation to the transition from the provisions of the Government of India Act, to the pro-

visions of this Act, and in relation to the transition from the provisions of Part XIII of this Act to the provisions of Part II of this Act :

> And whereas the nature of those difficulties, and of the provision which should be made for meeting them, cannot at the date of the passing of this Act be fully fore seen
> (1) A.I.R. 1956 S.C. 285.

Now therefore, for the purpose of facilitating each of the said transitions His Majesty may by Order in Council-

(a) direct that this Act and any provisions of the Government of India Act still in force shall, during such limited period as may be specified in the Order, have effect subject to such adaptations and notifications as may be so specified :

> (b) make, with respect to a limited period so specified such temporary provision as he thinks fit for ensuring that, while the transition is being effected and during the period immediately following it, there are available to all governments in India and Burma sufficient revenue to enable the business of those governments to be carried on ; and
>
> (e) make, such other temporary provisions for the purpose of removing any such difficulties as aforesaid as may be specified in the Order.
>
> (2) No Order in Council in relation to the transition from the provisions of Part XIII of this Act to the provisions of Part 11 of this Act shall be made under this section after the expiration of six months from the establishment of the Federation, and no other Order in Council shall be made under this section after the expiration of six months from the commencement of Part III of this Act."
>
> Paragraph 15 of the Transitory Order reads :
>
> "(1) For a period of twelve months from the date of the commencement of Part III of the new Act a person who immediately before the said date was holding an office under the Crown in India shall Act be disqualified from continuing to hold that office by reason of the fact that he is not a British subject and that no declaration entitling him to hold the office has been made under section two hundred and sixty-two of the new Act. (2) Until other provision is made under the new Act, the conditions of service applicable to any person or any class of persons appointed or to be appointed

> to serve His Majesty in a civil capacity in India shall be the same as were applicable to that person or, as the case may be, to persons of that class immediately before the commencement of Part III of the new Act."

The provisions of cl. (2) of the above paragraph are in furtherance of the provisions of cl. (c) of sub-s.(1) of s. 310, and not in view of cl. (a) of sub-s. (1) of s. 310, as those provisions do not direct in any way that any provisions of the Government of India Act 1935, or of the Government of India Act of 1919 would have effect subject to certain specified adaptations and modifications and during any limited period. It follows that these provisions do not affect the operation of s. 241 (1) of the Act empowering the Government to make appointment. In fact its operation could be affected only by any express provision in the Act itself. Power of appointment includes power of dismissal. It is true that the conditions of service include the provisions prescribing the circumstances in which a government servant be dismissed or removed from service. But the previous conditions of service will continue only till such time as other provision is made under the Act. When the Act already provided by s. 241 (1) that the Governor would be the appointing authority, the natural consequence of which was that the Governor would be the authority to dismiss there was nothing the provisions of this sub-paragraph-for the conditions of service relating to dismissal to be operative subsequent to the coming into force of the Act. Even if it be construed that the provisions of this sub-paragraph justified the continuance of the Tehsildari Rules till other provisions were made under the Act reference to the Financial Commis- sioner in these Rules will be taken to be reference to the Governor in view of paragraph 7 of the Adaptation Order as already held by me. It is contended for the State that nothing in the Adaptation Order will affect these provisions in view of cl. (d) of paragraph 12 of the Adaptation Order which reads :

> "(For the avoidance of doubt it is hereby declared that)-
>
> no repeal effected by this order shall affect the operation of sub-paragraph (2) of para- graph fifteen of the Government of India (Commencement and Transitory Provisions) Order, 1936."

This clause simply provides for the provisions of sub- paragraph(2) of paragraph 15 of the Transitory order to be not affected by any repeal made by the Adaptation Order, but does not provide that the provisions of this sub-paragraph would not be affected by the provisions of the Act itself or of the Adaptation Order which do not repeal any law. It follows therefore that in the construction of the rules laying down the conditions of service, the provisions of paragraph 7 of the Adaptation Order which do not repeal any law will have to be applied and that therefore reference to the Financial Commissioner in these rules will be taken to' be a reference to the Governor.

Even if the contention for the State about the effect of subparagraph (2) of paragraph 15 of the Transitory Order and of the various paragraphs of the Adaptation Order be accepted, the Tehsildari Rules will continue only till other rules are made by the Governor in the exercise of his power under s.241(2) of the Act.

The Governor of Punjab made the Punjab Civil Services Rules under s. 241 of the Government of India Act, 1935. These rules came into force from April 1, 1941. The learned Single Judge held that these rules applied to the appellant and said that it was nobody's case that the Civil Service Rules, made after the 1935 Act, contained any provisions which kept those Rules of 1932 alive and in force. The judgment under appeal does not may to the contrary. In fact it makes no reference to these rules at all. The learned Advocate General for the State submitted that these Rules did not apply to the appellant in view of cl.(ii) of r. 1.4. I do not agree with this contention. Rule 1.2 reads "(a) Except as otherwise provided in rule 1.4 infra, or in any other rule or rules, these rules shall apply to all Government servants belonging to the categories mentioned below, who are under the administrative control of the Punjab Government and whose pay is debitable to the revenue of the Punjab:-

> (1) Members of Provincial Services (2) Members of Subordinate Services (3) Holders of Special Posts; and (4) Any other Government servant or class of Government servants to whom the competent authority may, by general or special order, make them applicable.
>
> (b) These rules shall also apply- (1) to the persons serving on (i) the staff attached to the High Court, Lahore, and (ii) Secretarial staff of the Governor, in respect of whom powers to frame rules have been 54O vested in the Chief Justice and the governor under sections 242 (4) and 305 (2) of the Government of India Act, 1935, respectively; and (2) to the subordinate ranks of the Punjab Police forces' appointed under special Acts relating to those forces in so far as they are not inconsistent with the provisions in those Acts (vide s. 243 of the Government of India Act, 1935)".

Rule 1.3 provides for the competent authority to make rules inconsistent with these rules in certain conditions by agreement with the person appointed. Rule 1.4 reads.

> "These rules shall not apply to-
>
> (i) Any Government servant between whom and the Gevernment, a specific contract or agreement subsists in respect of any matter dealt with herein to the extent upto which specific provision is made in the contract or agreement (vide rule 1.3);
>
> (ii) any person for whose appointment and conditions of service special provision is made by or under any law for the time being in force; and
>
> (iii) any Government servant or class of Government servants to whom the competent authority may, by general or special order, direct that they shall not apply in whole or in part. One of such classes of Government servants is that employed only occasionally or which is subject to discharge at one month's notice or less, A list of such Government servants is given in Appendix 2."

Reliance for the State, as already mentioned, is placed on cl. (ii) of this rule. It in contended that the provisions under the Tehsildari Rules for the appointment and conditions of service of Tehsildars and Naib Tehsildars amount to special provisions made by or under any law for the time being in force. If rules existed for any service, and I presume that they existed for almost all services, prior to the coming into force of the Civil Services Rules, Punjab, the interpretation sought to be put on el. (ii) would make such rules special provisions contemplated by that clause, and to my mind, the Civil Services Rules would not then apply to most of the services and persons holding posts. Such could not have been the intention of the rule-making power, and such a construction ought not to be put on el. (ii), unless there be something which compels such a construction to be placed on this clause, and which I do not find anywhere in these rules. I am of opinion that Tehsildars and Naib Tehsildars do not come under this exception. They, according to the Teh- sildari Rules, constitute the Punjab Service of Tehsildars and Naib Tehsildars. Clause (ii) does not refer to services as such, but contemplates individual persons for *hose appointment special provision is made by or under any law for the time being in force. It speaks of special provisions with respect to a person. I find it difficult to hold that rules applicable to a service come within the special provisions applicable to a member of that service. The special provision contemplated by this clause ought to be made under some law or under the provisions of some law which has force when the Civil Services Rules apply to the services and that person. To hold that the Tehsildari Rules amount to such law will presume' that they continued in force after the Civil Services Rules, 1941, have come into force. No such presumption can be made when this is the point to be determined.

The Tehsildari Rules were not made under any law which was in force during the period subsequent to the coming into force of the Civil Services Rules. They were made under a certain provision of the Punjab Land Revenue Act. That provision was repealed by the Adaptation Order in 1937, and therefore, those rules cannot be said to have been made under any law which was in force for the time being , since the enforcement of the Civil Services Rules. I am therefore of opinion that clause (ii) of r. 1.4 does not apply to the case of the appellant and that therefore his case is governed by rule 1.2. The persons who are contemplated under cl.(ii) of rule 1.4 are those with respect to whom the Act or other statutes in force lay down provisions for appointment and conditions of service.

The Act itself provides in s. 243 that the conditions of service of the subordinate ranks of the various police forces in India shall be such as may be determined by or under the Acts relating to those forces respectively notwithstanding anything in the foregoing provisions of the Act. Reference to this provision is made in sub-cl. (2) of el. (b) of rule 1.2. There may be holders of Special posts mentioned in item No. (3) of cl. (a) of rule 1.2 and other officers under the administrative control of the Punjab Government to whom the provisions of a. 244 to 247 of the Act may apply and be thus put out of the, Rule making power of the Punjab Government. There may be other Acts which lay down special provisions for the appointment and conditions of service of persons in the service of the Punjab Government.

Reference may also be made to Chapter XIV of the Civil Services Rules, Punjab. Rule 14.1 reads thus :

"Besides the All-India Services which are under the rule making control of the Secretary of State the services under the adminis-

trative control of the Punjab Government consist of the following classes :-

(i) the Provincial Services; and

(ii) the Subordinate Services."

It is clear that every service under the Administrative control of the Punjab Government comes either under the Provincial Services or under the Subordinate Services. The Services of Tehsildars and Naib Tehsildars contemplated by the Tehsildari Rules must therefore come under the Subordinate Services for the purpose of rule 14.1. This is also clear from rules 14.5 and 14.6.

The Tehsildari Rules are with respect to the recruitment and appointment of Tehsildars and Naib Tehsildars and also deal with the seniority of the members of the service and the penalties, including the penalty of dismissal, which can be imposed upon any member of the service by the authorities mentioned in it, after following the procedure laid down. The rules, it is obvious, do not refer to many a matter which affect the service and which are dealt with by the Civil Services Rules in addition to appointment and dismissal of government servants. In matters not covered by the Tehsildari Rules, the Tehsildars and Naib Tehsildars must be governed by the Civil Services Rules. I cannot contemplate, that there are no rules to govern them in respect of those matters. It cannot be that these Civil Rules will apply to Tehsildars and Naib Tehsildars in certain matters and not in matters of appointment and dismissal. Clause (ii) of rule 1.4 does not make the rules partially not applicable to the persons contemplated by it. This consideration supports my interpretation of this clause to the effect that it does not cover the case of Tehsildars and Naib Tehsildars.

I find certain rules specifically referring to Tehsildars and Naib Tehsildars, and this, in my opinion, leaves no room for doubt that the Civil Service Rules apply to Tehsildars and Naib Tehsildars. Rule 2.16 defines 'duty'. Clause (b) of this rule states that a Government servant is also treated as on duty under the circumstances specified in the schedule to Chapter 11. The schedule referred to mentions in el. (4) of item II that a Tehsildar or a Naib Tehsildar, in certain circumstances specified therein, will be treated to be on duty, even though he may have spent time beyond his sphere of duty. Rule 5.35 deals with circumstances in which a competent authority may grant rent-free accommodation to any government servant. Appendix 7 gives the list of government servants granted rent-free quarters, as referred to in Note 6 to rule 5.35. Tehsildars and Naib Tehsildars are included among such servants according to Serial entry No. 3. Rule 8.23 deals with the authorities competent to grant certain type of leave. These authorities are mentioned in Appendix 12. At serial No. 7 the entry shows that Commissioners of Divisions can grant such leave to Tehsildars and Naib Tehsildars. Appendix 17, referred to in rule 8.61 authorises the Deputy Commissioners to grant casual leave to Tehsildars and Naib Tehsildars. Appendix 23 deals with Government Servants' Conduct Rules, 1935, referred to in rule 14.8.

I am therefore of opinion that the Civil Service Rules of 1941 governed the conditions of service of Tehsildars and Naib Tehsildars and that the Tehsildari Rules of 1932 ceased to be operative from April 1, 1941 even if they continued to be effective till that date in view of the provisions of the Transitory Order and the Adaptation Order. The Tehsildari Rules, therefore were not in force immediately before the coming into force of the constitution and therefore could not have continued in force after January 26, 1950. Article 313 provided for the continuance of such laws which were in force immediately before the commencement of the constitution and which were applicable to any public service and which service continued to exist after the commencement of the Constitution. Such laws were to continue until other provisions were made in that behalf under the constitution. The Governor of the Punjab, in the exercise of his powers under the proviso to Art. 309 of the Constitution made the Punjab Civil Service Rules which were to come into force from April 1, 1953. The rules corresponding to the rules of 1941 referred to by me are similar and therefore, in view of my opinion that the Civil Services Rules of 1941 applied to the services of Tehsildars, and Naib Tehsildars also apply to that 'service.

I may just mention that rule 1.2 describes the categories of services under the administrative control of the Punjab Government differently from rule 1.2 of 1941. Members of Provincial Services were placed in three categories. Those of classes I and II in the first category, those of class III in the second and those of class IV in the third category and schedule to rule 14.5 gives the list of services declared as Provincial Services, Classes I and II. Rule 14.6 states that the Specialist Services shall consist of such Services (other than All India and Provincial Services, Class I and II) as the Government may from time to time by notification in the Punjab Gazette declare to be Specialist Services, and rule 14.7 then provides that Provincial Services, Class III and IV, include persons to whom those rules apply and who are not already included in the Provincial Services Class I and Class II and the Specialist Services. The Tehsildars and Naib Tehsildars thus come either in the Provincial Services Class III Or Class IV. The appellant was dismissed by an order of the Financial Commissioner dated October 26, 1953, when the Punjab Civil Services Rules which came into force on April 1, 19.53 were in force. Rule 14.9 provides that a competent authority may issue rules specifying the penalties which may be imposed on members of the services and the procedure for preferring appeals against the imposition of such penalties. Appendix 24 to these rules gives the Punjab Civil Services (Punishment and Appeal) Rules, 1952. Rule 6 of these rules states that subject to the provisions 1 of clause(1) of Article 311 of the Constitution of India, the authorities competent to impose any of the penalties specified in rule 4 upon the persons to whom these rules apply, shall be such as maybe prescribed by Government in the rules regulating the appointment and conditions of service of such persons. It has not been shown that the Financial Commissioner is one of the authorities prescribed by the Government in the rules regulating the appointment and conditions of service of Tehsildars and Naib Tehsildars. It follows therefore that the Financial Commissioner cannot be hold to be a Competent authority to dismiss Tehsildars, in 1953. I am therefore of opinion that the dismissal of the appellant by the Financial Commissioner is illegal. I would therefore allow the appeal with costs, set aside the order under appeal and restore the order of the learned Single Judge, dated April 4, 1957.

By COURT: In view of the opinion of majority, the appeal is dismissed with costs.

Appeal dismissed.