The State Of West Bengal vs Nripendra Nath Bagchi on 10 September, 1965

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Author: M. Hidayatullah

Bench: M. Hidayatullah, P.B. Gajendragadkar, K.N. Wanchoo, J.C. Shah, S.M. Sikri

PETITIONER:
THE STATE OF WEST BENGAL

Vs.

RESPONDENT:
NRIPENDRA NATH BAGCHI

DATE OF JUDGMENT:
10/09/1965

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
GAJENDRAGADKAR, P.B. (CJ)
WANCHOO, K.N.
SHAH, J.C.
SIKRI, S.M.

CITATION:
1966 AIR 447 1966 SCR (1) 771
CITATOR INFO :

R	1967 SC 903	(8)
D	1968 SC 647	(11,12,13)
RF	1970 SC 158	(11)
RF	1970 SC1494	(9,10)
RF	1970 SC1616	(4)
RF	1972 SC1028	(14)
R	1974 SC 710	(46)
E	1975 SC 613	(25,26,27,28)
R	1976 SC1841	(11,15)
RF	1976 SC1899	(20,23)
RF	1976 SC2490	(17)
RF	1977 SC2328	(53)
E&R	1978 SC 68	(226,259)
R	1979 SC 193	(22,38)

R	1979 SC 478	(152)
R	1982 SC 149	(618,696,1007)
F	1982 SC1579	(16,17)
F	1984 SC 626	(3)
R	1988 SC1388	(12)
F	1992 SC2000	(5)

ACT:
Constitution of India Art. 235-High Court's Control over subordinate courts--Control whether includes disciplinary powers-Inquiry into Conduct of District Judge whether to be made by High Court or by the State Government-West Bengal Set-vice Rules-Rule 75(a)-Service period whether can be extended for purpose of enquiry against officer.

HEADNOTE:
The respondent was appointed a Munsif on November 10, 1927. After promotion he became an Additional District and Sessions Judge and officiated at several stations as District and Sessions Judge but was never confirmed as such. In the ordinary course he was due to superannuate and retire on July 31, 1953. By an order dated July 14, 1953 the Government of West Bengal ordered that the respondent be retained in service for a period of two months commencing from August 1, 1953. The order purported to be under Rule 75(a) of the West Bengal Service Rules, Part 1. By another order dated July 20, 1953, the respondent was placed under suspension and on the following day he wag served with charges and asked to file a written reply within 15 days. An enquiry into the charges was made by an officer appointed for the purpose. During the period of the enquiry the respondent was retained in service, though kept in suspen-sion, by repeated orders under rule 75(a). The enquiry officer reported that some of the charges were proved. On March 18, 1954 the respondent was asked to show cause why he should not be dismissed from service and after be had shown cause he was dismissed on May 27, 1954. The Public Service Commission was consulted but not the High Court. The respondent appealed to the Governor unsuccessfully. Thereafter he applied to the High Court at Calcutta under Arts. 226 and 227 of the Constitution against his dismissal. The High Court quashed the order of dismissal as well as the enquiry. The Government of West Bengal appealed to this Court on a certificate granted by the High Court.
The questions that fell for consideration were : (1) Whether the enquiry ordered by the Government and conducted by an Executive Officer of the Government against a District and Sessions Judge contravened the provisions of Art. 235 of the Constitution which vests in the High Court the control over the District Court and the courts subordinate thereto; and

(2) whether the provisions of rule 75(a) West Bengal Service Rules could be utilised to extend the service of the respondent beyond the normal age of retirement.

HELD : (i) Rule 75(a) which was modelled on Rule 56(a) of the Fundamental Rules was not designed to be used for the purpose of retaining a person in service for enquiry against him but to keep in employment persons with a meritorious record of service who although superannuated can render some more service and whose retention in service is considered necessary on public grounds. If retention in service for the first reason was considered necessary a rule like Rule 56(d) of the Fundamental Rules was required. [777 E-C]

7 72

(ii) There is special provision for District Judges in the Constitution in Arts. 233 to 237. These articles deal with the appointment of persons to be, and postings and promotions of, District Judges and appointment, postings and promotions of Judges subordinate to the District Court and the courts subordinate thereto. They also provide for special rules to be made by the Governor of the State after consultation with the State Public Service Commission and the High Court exercising jurisdiction in relation to each State. These articles were not placed in the Chapter on services but immediately after the provisions in regard to the High Courts. The articles went a little further than the corresponding sections of the Government of India Act, 1935. They vested the 'control' of the district courts and the courts subordinate thereto in the High Courts. [779 B-E; 785 B]

(iii) The word 'control' as used in Art. 235 includes disciplinary control or jurisdiction over District Judges. The history which lies behind the enactment of these articles indicates that 'control' was vested in the High Court to effectuate a purpose, namely, the securing of the independence of the subordinate judiciary and unless it included disciplinary control as well the very object would be frustrated. [786 B]

The word 'control', moreover, is accompanied by the word 'vest' which is a strong word. It shows that the High Court is made the sole custodian ,of the control over the judiciary. Control therefore is not merely the power to arrange the day-to-day working of the court but contemplates disciplinary jurisdiction on the presiding Judge. [786 C-D]

Article 227 gives to the High Court superintendence over these Courts and enables the High Court to call for returns etc. The word 'control' in Art. 235 must have a different content. It includes something in addition to mere superintendence. It is control over the conduct and discipline of Judges. The inclusion of a right of appeal against the orders of the High Court in the conditions of service necessarily indicates an order passed in disciplinary jurisdiction, and the word 'deal' also points to disciplinary and not mere administrative jurisdiction.

[786 D-F]
(iv) Although the term used is "district court" the word 'court' is used compendiously to denote not only the court proper but also the presiding Judge. [786 G-H]
(v) That the Legislature has under Art. 309 the power to make laws relating to the services does not show that the Executive under Art. 162 enjoys corresponding executive power, when the Constitution indicates otherwise. [787 F-G]
(vi) There is nothing in Art. 311 which compels the conclusion that the High Court is ousted of the jurisdiction to hold the inquiry if Art. 235 vested some power in it. The control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can bold enquiries, impose punishments other than dismissal or removal subject however to the conditions of service, to a right of appeal if granted by the conditions of service, and to the ,giving of an opportunity of showing cause as required by cl. (2) of Art. 31 1. unless such an opportunity is dispensed with by the Governor acting under the provisos (b) and (c) to that clause. [790 A-C]
The High Court alone could have held inquiry in this case. To hold otherwise would be to reverse the trend which has moved determinedly in this direction. [790 C-D]
773

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 391 of 1964. Appeal from the judgment and order dated July 1, 1960 of the Calcutta High Court in Civil Rule No. 520 of 1955. C. K. Daphtary, Attorney-General, B. Sen, S. C. Bose and P. K. Bose, for the appellants.

N. C. Chatterjee, Sukumar Ghose for S. C. Mazumdar, for the respondent.

B. R. L. Iyengar, S. K. Mehta and K. L. Mehta, for inter- vener No. 1.

Arun B. Saharya and Sardar Bahadur, for intervener No. 2. Naunit Lal, for intervener No. 3.

S. V. Gupte, Solicitor-General and B. R. G. K. Achar, for intervener No. 4.

N. Krishnaswamy Reddy, Advocate-General, Madras and A. V. Rangam, for intervener No. 5.

D. Sahu, Advocate-General, Orissa, B. P. Jha and R. N. Sachthey for intervener No. 6.

R. N. Sachthey, for intervener No. 7.

Haradev Singh, for intervener No. 8.

The Judgment of the Court was delivered by Hidayatullah, J. This is an appeal by the State of West Bengal and its Chief Secretary against the judgment of the Calcutta High Court dated July 1, 1960 by which the order dismissing N. N. Bagchi (the respondent) from service was quashed. The High Court certified the case as fit for appeal to this Court under Arts. 132(1) and 133(1)(c) of the Constitution.

N. N. Bagchi was appointed a Munsif on November 10, 1927. After promotions he became an Additional District & Sessions Judge and officiated at several stations as District & Sessions Judge but he was never confirmed as such. He last acted as a District & Sessions Judge at Birbhum in March 1953. In April of the same year he was transferred to Alipore as an Additional District & Sessions Judge. In the ordinary course Bagchi was due to superannuate and retire on July 31, 1953. On April 17, 1953 he applied for leave from April 27, 1953 to July 31, 1953 preparatory to retirement. The leave was held inadmissible. He was, however, granted leave from July 17, 1953 to the end of his service. Bagchi, however, reported on April 27, 1953 that he had gone to Puri on April 25, 1953 because his son was ill and asked for one month's leave from April 27, 1953. Leave for 3 weeks was granted which, at his request, was extended to June 5, 1953.

By an order dated July 14, 1953 Government ordered that Bagchi be retained in service for a period of two months commencing from August 1, 1953. The order reads :

> "I am directed to state that Government have been pleased to sanction, under Rule 75(a) of the West Bengal Service Rules, Part 1, the retention in service of Nripendra Nath Bagchi, Additional District and Sessions Judge, 24- Parganas for a period of two months with effect from 1st August, 1953, the date of his compulsory retirement, in the interest of the public service".

Rule 75(a) which was invoked reads as follows Rule-"75(a). Except as otherwise provided in this rule, the date of compulsory retirement of a Government servant other than a member of the clerical staff or a servant in inferior service is the date on which he attains the age of 55 years. He may, however, be retained in service beyond that date with the sanction of Government on public grounds which should be recorded in writing; but he shall not be retained after attaining the age of 60 years except in very special circumstances."

By another order dated July 20, 1953 Bagchi was placed under suspension and on the following day he was served with 11 charges and was asked to file a written reply within 15 days. An enquiry into these charges followed and it was entrusted to Mr. B. Sarkar. I.C.S., Commissioner, (later Member, Board of Revenue) by the Government of West Bengal. The enquiry continued for a long time and Bagchi was retained in service, though kept under suspension, by repeated orders of different durations under rule 75(a). Mr. Sarkar made his report to the Government on December 21, 1953 holding that some of the charges were proved. He did not recommend any punishment as he thought that punishment would depend upon Bagchi's record of service. On March 18, 1954 Bagchi was asked to show cause why he should not be dismissed from service and after he had 77 5 shown

cause he was dismissed on May 27, 1954. The Public Service Commission was consulted but not the High Court. He appealed to the Governor unsuccessfully. On February 15, 1955 he applied to the High Court at Calcutta under Arts. 226 and 227 of the Constitution against his dismissal and a rule was issued. On the recommendation of Mr. Justice D. N. Sinha, the case was placed before a Full Bench, as important questions of constitutional law were involved. The Full Bench by its judgment dated July 1, 1960 made the rule absolute and quashed the order of dismissal as well as the enquiry. On the application of the Government of West Bengal the High Court certified the case as fit for appeal to this Court and the present appeal was filed. At an earlier hearing this Court ordered that notices be issued to all the Advocates General of the States and to the High Courts, because the questions involved were of considerable general and constitutional importance. In answer to the notices some of the States and the High Courts intervened arguing either in favour of or against the judgment under appeal. While making his recommendation D. N. Sinha J. drew up the points of controversy in the case. They may be set down here :

> "(1) That the provisions of Rule 75(a) of the West Bengal Service Rules have not been compiled with.
>
> (2) That the service of a civil servant cannot be extended merely for the purpose of dismissal.
>
> (3) That the control over the District Courts and the Courts subordinate thereto are vested with the High Court under Article 235 of the Constitution, and the authority competent to take disciplinary proceedings and action against the petitioner or to deal with in any way was the High Court and not any other authority.
>
> (4) That the provisions of the Civil Service (Control, Classification and Appeal) Rules in so far as they authorise any authority other than the High Court to take disciplinary action against the person holding the post of petitioner are ultra vires and void under Article 235 of the Constitution. (5) That, in any event, the entire departmental enquiry and proceedings have been conducted in violation of the principle of natural justice.

7 76 At the final hearing this appeal was confined to the first three points. The fourth point and the allegations about denial of natural justice were not discussed. The three points may be summarized into two : (1) whether the enquiry ordered by the Government and conducted by an Executive Officer of the Government against a District & Sessions Judge contravened the provisions of Art. 235 of the Constitution which vests in the High Court the control over the District Court and the courts subordinate thereto; and (2) whether the provisions of rule 75(a) West Bengal Service Rules could be utilized to extend the service of Bagchi beyond the normal age of retirement. On hearing arguments we are satisfied that the answer to both the questions must be against the Government. We shall now proceed to give our reasons.

We may begin with Rule 75(a) because that question, although not so important as the other, causes less trouble. The rule, which was earlier set out-, may be compared with rules 56(a) and 56(d) of the

Fundamental Rules-

> "56(a) Except as otherwise provided in the other Clauses of this Rule the date of Compulsory retirement of a Government servant other than a ministerial servant, is the date on which he attains the age of 55 years. He may be retained in service after the date of compulsory retirement with the sanction of the Local Government on public grounds, which must be recorded in writing but he must not be retained after the age of 60 years except in very special circumstances."
>
> "56(d) Notwithstanding anything contained in clauses (a), (b) and (c), a Government servant under suspension on a charge of misconduct shall not be required or permitted to retire on reaching the date of compulsory retirement, but shall be retained in service until the enquiry into the charge is concluded and a final order is passed thereon by competent authority."

It was conceded in the High Court that rule 5 6 (d) of the Fundamental Rules framed under s. 96-B of the Government of India Act did not apply to District & Sessions Judges. The West Bengal Service Rules were made by the Governor under s. 241 of the Government of India Act, 1935 and they were made applicable to the services of the Government of West Bengal. When the West Bengal Service Rules were made, the Fundamental Rules were available. Rule 75(a) was modelled on Rule 56(a) of the Fundamental Rules but no rule like Rule 56(d), which 7 7 7 we have quoted, was included. Under s. 276 of the Govern- ment of India Act, 1935, the West Bengal Service Rules would prevail over the Fundamental Rules, and it is conceded that they alone govern this case. Even if Rule 56(d) of Fundamental Rules was available it was not utilized. Repeated orders were passed under rule 75(a), West Bengal Service Rules and these orders said that the retention of Bagchi was in the interest of public service. Rule 75(a) is hardly designed to be used for this purpose. It is intended to be used to keep in employment persons with a meritorious record of service who, although superannuated, can render some more service and whose retention in service is considered necessary on public grounds. This meaning is all the more clear when we come to the end of the rule where it is stated that a government servant is not to be retained after he attains the age of sixty years except in very special circumstances. This language hardly suits retention for purposes of departmental enquiries. Mr. Justice P. B. Mukherji pointed out very appositely the contrast between rule 56(a) and (d) of the Fundamental Rules. Rule 56(a) corresponds to rule 75(a) but rule 56(d) opens with the words "notwithstanding anything contained in clause (a). . ." (of Rule 56). This shows that they cover different situations and the matters in Rule 56(d) do not cover matters in Rule 56(a). In dealing with the application of the rules the learned Judge observed "No consent of the petitioner for retaining his service was called 'or obtained. The two expressions in the above order (1) "Retention in Service" and (2) "in the interest of public service" do not on the facts of this case mean what they say. Here "retention in service"

> means suspension from service because from the date when he was "retained" in service he was suspended from service. The other expression "the interest of the public service" does not mean actual service to the public but meant only departmental enquiry against him. His service was extended from time to time with a

> view to enable the Government to start and conclude the departmental enquiry against him during which the petitioner was allowed to live on a bare subsistence allowance."

We find it sufficient to say that we agree that the retention of Bagchi in service under rule 75(a) for the purpose of enquiry was not proper and the extension of the service was illegal.

We now come to the next question whether Government Or the High Court should order, initiate, and hold enquiries into the conduct of District Judges. This problem would not have arisen if there was no special provision for District Judges in the Constitution in Chapter VI entitled "Subordinate Courts" immediately after Chapter V which deals with the High Courts in the States. Chapter VI consists of five articles, Nos. 233 to 237. The last article in this list merely provides for the application of the provisions of this Chapter to Magistrates in the State as they apply in relation to persons appointed to the Judicial Service of the State subject, however, to such exceptions and modifications as may be specified. The expression "judicial service" is defined in the preceding Art. 236(b) and it means service consisting exclusively of persons intended to fill the post of district Judge and other civil judicial posts inferior to the post of district judge. The word "district judge" is also' defined in the same article by cl. (a) and it includes, among others, an additional district judge. The other three articles are important and the relevant parts may be set out here :

> "254. Appointment of district judges.
>
> (1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.
>
> "234. Recruitment of persons other than district judges to the judicial service. Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State."
>
> "235. Control over subordinate courts. The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as 77 9 taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law."

These articles deal with the appointments of the persons to be, and postings and promotions of district judges and appointment, postings and promotions of judges subordinate to the District Judge and the control over the District Court and the courts subordinate thereto. They also provide

for special rules to be made by the Governor of the State after consultation with the State Public Service Commission and the High Court exercising jurisdiction in relation to each State. This group of articles is intended to make special provision for the judicial service of the State. What it intends to do is, of course, the bone of contention between the parties. To understand why this special Chapter was necessary when there is Part XIV dealing with Services under the Union and the States, it is necessary to go into a little history of this constitutional provision. Before we set down briefly how this Chapter came to be enacted outside the Part dealing with Services and also why the articles were worded, as they are, we may set down the corresponding provisions of the Government of India Act, 1935. There too a special provision was made in respect of judicial officers but it was included as a part of Chapter 2 of Part X which dealt with the Civil Services under the Crown in India. The 'cognate sections were ss. 254 to 256 and they may be reproduced here :

> "254. District Judges, & c.
>
> (1) Appointments of persons to be, and the posting and promotion of, district judges in any Province shall be made by the Governor of the Province, exercising his individual judgment, and the High Court shall be consulted before a recommendation as to the making of any such appointment is submitted to the Governor.
>
> (2) A person not already in the service of His Majesty shall only be eligible to be appointed a district judge if he has been for not less than five years a barrister, a member of the Faculty of Advocates in Scotland, or a pleader and is recommended by the High Court for appointment.
>
> 7 80 (3) In this and the next succeeding section the expression "district judge" includes additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, sessions judge, additional sessions judge, and assistant sessions judge."

255. Subordinate civil judicial service. (1) The Governor of each Province shall, after consultation with the Provincial Public Service Commission and with the High Court, make rules defining the standard of qualifications to be attained by persons desirous of entering the subordinate civil judicial service of a Province.

In this section, the expression "subordinate civil judicial service" means a service consisting exclusively of persons intended to fill civil judicial posts inferior to the post of district judge.

(2) The Provincial Public Service Commission for each Province, after holding such examinations, if any, as the Governor may think necessary, shall from time to time out of the candidates for appointment to the subordinate civil judicial service of the Province make a list or lists of the persons whom they consider fit for appointment to that service, and appointments to that service shall be made by the Governor from the persons included in the list or lists in accordance with such regulations as may from time to time be made by him as to the number of persons in the said service who are to belong to the different communities in the Province.

(3) The posting and promotion of, and the grant of leave to, persons belonging to the subordinate civil judicial service of a Province and holding any post inferior to the post of district judge, shall be in the hands of the High Court, but nothing in this section shall be construed as taking away from any such person the right of appeal required to be given to him by the foregoing provisions of this chapter, or as authorising the High Court to deal with any such person otherwise than in accordance with the conditions of his service prescribed thereunder."

7 81 "256. Subordinate criminal magistracy. No recommendation shall be made for the grant of magisterial powers or of enhanced magisterial powers to, or the withdrawal of any magisterial powers from, any person save after consultation with the district magistrate of the district in which he is working, or with the Chief Presidency magistrate, as the case may be."

It way be pointed out at once that in the present Constitution these provisions have been lifted from the Chapter dealing with Services in India and placed separately after the provisions relating to the High Courts of the States.

As far back as 1912 the is Commission stated that the witnesses before the Commission demanded two things : (1) recruitment from the Bar to the superior judicial service, namely, the District judgeship; and (2) the separation of the judiciary from the executive. The Commission stated in its report : "Opinion in India is much exercised on the question of the separation of the executive and the judicial functions of the officers" .... and observed that "to bring this about legislation would be required". The Commission made its report on August 14, 1915 a few days after the Government of India Act, 1915 (5 & 6 Geo. V, c. 61) was enacted. The Act did not, therefore, contain any special provision about the judicial services in India. The World War I was also going on. In 1919, Part VII-A consisting of ss. 96-B to 96-E was added in the Government of India Act 1915. Section 96-B provided that every person in the Civil Service of the Crown in India held office during His Majesty's pleasure but no person in that service might be dismissed by any authority subordinate to that by which he was appointed. The only section that concerns us is S. 96- B. Sub-s. (2) of that section reads as follows "(2) The Secretary of State in Council may make rules for regulating the classification of the civil service in India, the methods of their recruitment, their conditions of service, pay and allowances, and discipline and conduct. Such rules may, to such extent and in respect of such matters as may be prescribed, delegate the power of making rules to the Governor-General in Council or to local Governments, or authorise the Indian legislature or local legislatures to make laws regulating the public services : "

> 7 82 The Fundamental Rules and the Civil Services (Classification, Control and Appeal) Rules were made by the Secretary of State in Council under the above rule-making power. These rules governed the judicial services except the High Court. Part IX of the Government of India Act dealt with the Indian High Courts, their constitution and jurisdiction. Section 107 gave to the High Courts superintendence over all courts for the time being subject to its appellate jurisdiction and enumerated the things the High Court could do. They did not include the appointment, promotion, transfer or control of the District Judges. High Courts could only exercise such control as came within their superintendence over the courts subordinate to

their appellate jurisdiction. In the Devolution Rules, item 17 in Part II dealing with the Provincial subjects read as follows :-

> "Administration of justice, including constitution, powers, maintenance and Organisation of civil courts and criminal jurisdiction within the Province; subject to legislation by the Indian legislature as regards High Courts, Chief Courts, and Courts of Judicial Commissioners and any Courts of criminal jurisdiction".

It would thus appear that the problem about the independence of judicial officers, which was exercising the minds of the people did not receive full attention and to all intents and purposes the Executive Government and Legislatures controlled them. The recommendations of the Islington Commission remained a dead letter. When the Montague- Chelmsford enquiry took place the object was to find out how much share in the legislative and executive fields could be given to Indians. The post of the District Judge was previously reserved for Europeans. The disability regarding Indians was removed as a result of the Queen's Proclamation in 1870 and rules were framed first in 1873. In 1875 Lord Northbrook's Government framed rules allowing Indians to be appointed and Lord Litton's Government framed Rules fixing 1/5th quota for the Indians. There was no fixed principle on which Indians were appointed and the report of the Public Service Commission presided over by Sir Charles Atchison in 1886 contains the system followed in different Provinces. This continued down to 1919. The Government of India Act had introduced Dyarchy in India and the question of control of services in the transferred field was closely examined when the Government of India Act, 1935 was enacted. It was apprehended that if transference of power enabled the Ministers to control the services, the flow of Europeans to the civil services would become low. Government appointed several Committees, chief among them the Mac Donnelly Committee considered the position of the Europeans vis-a-vis the services, There was more concern about Europeans than about the independence of the judiciary.

The Indian Statutory Commission did not deal with the sub- ject of judicial services but the Joint Committee dealt with it in detail. It is interesting to know that the Secretary of State made a preliminary statement on the subject of subordinate civil judiciary and his suggestion was "to leave to the Provincial Legislatures the general power" but to introduce in the Constitution "a provision which would in one respect override those powers, namely, a provision vesting in the High Courts, as part of their administrative authority, power to select the individuals for appointment to the Civil Judicial Services, to lay down their qualifications, and to exercise over the members of the service the necessary administrative control." He said that "the powers of the local Government should be "to fix the strength and pay of the services to which the High Court would recruit" and to lay down, if they so thought fit, any general requirements..... During the debates Marquis of Salisbury asked a question with regard to the general powers of the High Courts and the control over the subordinate courts. It was :

> "As I understood the Secretary of State in his statement, the control of the High Court over the Subordinate judges in civil matters has to be as complete as possible and maintained. Is that so ?" The answer was, "Yes". (No. 7937). The recommendations of the Joint Committee also followed the same objective. In the report (paragraph 337 p.

201) the following observations were made :

"337. Necessity for securing independence of subordinate judiciary.

by the Crown and their independence is secure; but appointments to the Subordinate Judiciary must necessarily be made by authorities in India who will also exercise a certain measure of control over the Judges after appointment, especially in the matter of promotion and posting. We have been greatly impressed by the mischiefs which have resulted elsewhere from a system under which promotion from grade to grade in a judicial hierarchy is in the hands of a Minister exposed 7 84 to pressure from members of a popularly elected Legislature. Nothing is more likely to sap the independence of a magistrate than the knowledge that his career depends upon the favour of a Minister; and recent examples (not in India) have shown very clearly the pressure which may be exerted upon a magistracy thus situated by men who are known, or believed, to have the means of bringing influence to bear upon a Minister. It is the Subordinate Judiciary in India who are brought most closely into contact with the people, and it is no less important, perhaps indeed even more important, that their independence should be placed beyond question than in the case of the superior Judges.

As a result, when the Government of India Act 1935 was passed it contained special provisions (sections 254-256 already quoted) with regard to District Judges and the subordinate judiciary. It will be noticed that there was no immediate attempt to put the subordinate criminal magistracy under the High Courts but the posting and promotion and grant of leave of persons belonging to the subordinate judicial service of a Province was put in the hands of High Court though there was right of appeal to any authority named in the rules and the High Courts were asked not to act except in accordance with the conditions of the service prescribed by the Rules. As regards the District Judges the posting and promotions of a District Judge was to be made by the Governor of the Province exercising his individual judgment and the High Court was to be consulted before a recommendation to the making of such an appointment was submitted to the Governor. Since s. 240 of the Government of India Act, 1935 provided that a civil servant was not to be dismissed by an authority subordinate to that which appointed him, the Governor was also the dismissing authority. The Government of India Act, 1935 was silent about the control over the District Judge and the subordinate judicial services. The administrative control of the High Court under s. 224 over the courts subordinate to it extended only to the enumerated topics and to superintendence over them. The independence of the subordinate judiciary and of the District Judges was thus assured to a certain extent, but not quite. When the Constitution was being drafted the advance made by the 1935 Act was unfortunately lost sight of. The draft Constitution made no mention of the special provisions, not even similar to those made by the Government of India Act, 1935, in respect of the subordinate judiciary. If that had remained, the judicial services would have come under Part XIV dealing with the services in India. An amendment,

fortunately, was accepted and led to the inclusion of Arts. 233 to 237. These articles were not placed in the Chapter on services but immediately after the provisions in regard to the High Courts. The articles went a little further than the corresponding sections of the Government of India Act. They vested the "control" of the district courts and the courts subordinate thereto in the High Courts and the main question is what is meant by the word "control". The High Court has held that the word "control" means not only a general superintendence of the working of the courts but includes disciplinary control of the presiding judges, that is to say, the District Judge and judges subordinate to him. It is this conclusion which is challenged before us on various grounds.

Mr. B. Sen appearing for the West Bengal Government contends that the word "control" must be given a restricted meaning He deduces this (a) on a suggested reading of Art. 235 itself and (b) on a comparison of the provisions of Chapter VI with those of Part XIV of the Constitution. We shall examine these two arguments separately as they admit of separate treatment. The first contention is that "control"

means only control of the day to day working of the courts and emphasis is laid on the words of Art. 235 "district courts" and "courts subordinate thereto". It is pointed out that the expressions "district judge" and "judges subordinate to him are not used. It is submitted that if the incumbents were mentioned control might have meant disciplinary control but not when the word "court" is used. Lastly, it is contended that conditions of service are outside "control" envisaged by Art. 235 because the conditions of service are to be determined by the Governor in the case of the District Judge and in the case of judges subordinate to the District Judge by the Rules made by the Governor in that behalf after consultation with the State Public Service Commission and with the High Court. We do not accept this construction. The word "control" is not defined in the Constitution at all. In Part XIV which deals with Services under the Union and the States the words "disciplinary control" or "disciplinary jurisdiction" have not at all been used. It is not to be thought that disciplinary jurisdiction of services is not contemplated. In the context the word "control" must, in our judgment, include disciplinary jurisdiction. Indeed. L8Sup.C1/65 -7 the word may be said to be used as a term of art because the Civil Services (Classification Control and Appeal) Rules used the word "control" and the only rules which can legitimately come under the word "control" are the Disciplinary Rules. Further as we have already shown, the history which lies behin the enactment of these articles indicate that "control" was vested in the High Court to effectuate a purpose, namely, the securing of the independence of the subordinate judiciary and unless it included disciplinary control as well the very object would be frustrated. This aid to construction is admissible because to find out the meaning of a law, recourse may legitimately be had to the prior state of the law, the evil sought to be removed and the process by which the law was evolved. The word "control", as we have seen, was used for the first time in the Constitution and it is accompanied by the word "vest" which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day to day working of the court but contemplates disciplinary jurisdiction over the presiding Judge. Art. 227 gives to the High Court superintendence over these court--, and enables the High Court to call for returns etc. The word " control" in Art. 235 must have a different content. It includes something in addition to mere

superintendence. It is control over the conduct and discipline of the judges. This conclusion is further strengthened by two other indications pointing clearly in the same direction. The first is that the order of the High Court is made subject to an appeal if so provided in the law regulating the conditions of service and this necessarily indicates an order passed in disciplinary jurisdiction. Secondly, the words are that the High Court shall "deal" with the judge in accordance with his rules of service and the word "deal" also points to disciplinary and not mere administrative jurisdiction.

Articles 233 and 235 make a mention of two distinct powers first is power of appointments of persons, their postings and promotion and the other is power of control. In the case of the District Judges, appointments of persons to be and posting and promotion are to be made by the Governor but the control over the District Judge is of the High Court. We are not impressed by the argument that the term used is "district court" because the rest of the article clearly indicates that the word "court" is used compendiously to denote not only the court proper but also the presiding Judge. The latter part of Art. 235 talks of the man who holds the office. In the case of the judicial service subordinate to the District judge the appointment has to be made 7 87 by the Governor in accordance with the rules to be framed after consultation with the State Public Service Commission and the High Court but the power of posting, promotion and grant of leave and the control of the courts are vested in the High Court. What is vested includes disciplinary jurisdiction. Control is useless if it is not accompanied by disciplinary powers. It is not to be expected that the High Court would run to the Government or the Governor in every case of indiscretion however small and which may not even require the punishment of dismissal or removal. These articles go to show that by vesting "control" in the High Court the independence of the subordinate judiciary was in view. This was partly achieved in the Government of India Act, 1935 but it was given effect to fully by the drafters of the present Constitution. This construction is also in accord with the Directive Principles in Art. 50 of the Constitution which reads :

> "50. The State shall take steps to separate the judiciary from the executive in the public services of the State".

Mr. Sen next argues that Arts. 309 to 311 (particularly Art.

311) gave a clue to the meaning of the word "control". The argument is that the legislation regarding services of the State falls within the jurisdiction of the State Legislature and Art. 309 gives the power to the State Legislature to regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the State. This is perhaps true. But Mr. Sen seems to make no distinction between lelegislative and executive powers. Under Art. 162 the power of the Executive of the State is coextensive with that of the Legislature of the State but all that is subject to the other provisions of the Constitution. That the Legislature has the power to make laws relating to the services does not show that the Executive enjoys corresponding executive power if the Constitution indicates otherwise. Art. 310 does no more than state the tenure of the office of the persons serving the Union or the State. That has no bearing upon the present dispute. Art. 311 is, therefore, the only article which has relevance. That article reads as follows :-

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of the State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him Provided that this clause shall not apply-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause; or

(c) where the President or Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity.

(3) If any question arises whether it is reasonably practicable to give to any person an opportunity of showing cause under clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final."

Mr. Sen argues somewhat syllogistically as follows : Under clause (1) of the Article no person in the service of the Union or the State can be dismissed or removed by an authority subordinate to that by which he is appointed. Under cl. (2) no such person can be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause. Reading the above with Arts. 233 and 234 he contends, and rightly, that a District Judge or a Judge subordinate to the District Judge cannot be dismissed or removed by any authority other than the Governor. Mr. Sen argues that this power of the Governor determines that the enquiry must be made by or under the directions of the Governor or the Government To lend support to this contention Mr. Sen draws pointed attention to provisos (b) and (c) to cl. (2). He says that by reason of proviso (b), cl. (2) does not apply if the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that it is not reasonably practicable to give to that person an opportunity of showing cause and under cl. (3) the decision of that authority is made final. Again, by the proviso (c), says he, the Governor may dispense with the enquiry altogether if he is satisfied that in the interest of the security of the State it is not expedient to give to any person an opportunity of showing cause. Mr. Sen contends that as the Governor alone can appoint or dismiss or remove District Judges and as he alone can decide whether, for any of the two reasons mentioned in provisos (b) and (c) an opportunity to a District Judge of showing cause against the charges leveled against him shall be denied, the Governor alone

can initiate enquiries and cause them to be held and the High Court cannot claim to hold them. In this way, he contends, the extent of control exercisable by the High Courts under Art. 235 must be so cut down as to keep disciplinary jurisdiction out. This argument was not presented in the High Court and does credit to the ingenuity of Mr. Sen but it is fallacious. That the Governor appoints District Judges and the Governor alone can dismiss or remove them goes without saying. That does not impinge upon the control of the High Court. It only means that the High Court cannot appoint or dismiss or remove District Judges. In the same way the High Court cannot use the special jurisdiction conferred by the two provisos. The High Court cannot decide that it is not reasonably practicable to give a District Judge an opportunity of showing cause or that in the interest of the security of the State it is not expedient to give such an opportunity. This the Governor alone can decide. That certain powers are to be exercised by the Governor and not by the High Court does not necessarily take away other powers from the High Courts. The provisos can be given their full effect without giving rise to other implications. It is obvious that if a case arose for the exercise of the special powers under the two provisos, the High Court must leave the matter to the Governor. In this connection we may incidentally add that we have no doubt that in exercising these special powers in relation to inquiries against District Judges, the Governor will always have regard to the opinion of the High Court in the matter. This will be so whoever be the inquiring authority in the State. But this does not lead to the further conclusion that the High Court must not hold the enquiry any more than that the Governor should personally hold the enquiry.

There is, therefore, nothing in Art. 311 which compels the A conclusion that the High Court is ousted of the jurisdiction to hold the enquiry if Art. 235 vested such a power in it. In our judgment, the control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal, subject however to the conditions of service, to a right of appeal if granted by the conditions of service, and to the giving of an opportunity of showing cause as required by cl. (2) of Art. 311 unless such opportunity is dispensed with by the Governor acting under the provisos (b) and (c) to that clause. The High Court alone could have held the enquiry in this case. To hold otherwise will be to reverse the policy which has moved determinedly in this direction.

The High Court was thus right in its conclusions. The appeal fails and is dismissed. It is clear that the conduct of Bagchi may not now be inquired into but that is a result which we can only regret. In the circumstances we make no order about costs.

Appeal dismissed.