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December 23.

PRADYAT KUMAR BOSE

v.

THE HON'BLE THE CHIEF JUSTICE OF CALCUTTA HIGH COURT.

[VIVIAN BOSE, BHAGWATI, JAGANNADHADAS, B. P. SINHA and JAFER IMAM JJ.]

Calcutta High Court—Letters Patent 1865 as amended in 1919—Clause 8 read with clause 4—Chief Justice—Power of appointment—Whether includes power of dismissal—Delegation of enquiry into charges by Chief Justice to another Judge—Competency thereof—Power to appoint or dismiss an officer—Whether an administrative power—Dismissal of an official by Chief Justice—Whether prior consultation of Public Services Commission necessary—Constitution of India, Arts. 229, 313, 320(3) and 367(1)—General Clauses Act, 1897 (Act X of 1897), s. 16.

The appellant was appointed in March 1948 by the Chief Justice of the Calcutta High Court as Registrar and Accountant-General of the High Court on its original side and confirmed therein in November 1948. He was dismissed from that post with effect from 1st September 1951 by the Chief Justice by his order dated 3rd September 1951. There were various charges against the appellant and Mr. Justice Das Gupta was deputed by the Chief Justice to make an enquiry and submit a report. Mr. Justice Das Gupta made a full enquiry and submitted a report in which he exonerated the appellant in respect of some of the charges but found him guilty in respect of other charges. His conclusion was that the appellant must be held guilty of misconduct and dishonest conduct and that he was unfit to hold the office of Registrar of the Original Side of the Calcutta High Court. The Chief Justice issued notice to the appellant intimating that he agreed with the report and asked him to show cause why he should not be dismissed from his post. After he was given an opportunity to show cause, the appellant was dismissed by an order of the Chief Justice.

The appellant's petition to the Governor for the cancellation of the above order was dismissed. Subsequently his application for review to the Chief Justice of the prior order of dismissal and a writ petition under Art. 226 of the Constitution filed in the High Court in respect of his dismissal were also dismissed one after the other. The appellant obtained leave to appeal to the Supreme Court. The three main points for consideration by the Supreme Court were :

1. Whether the Chief Justice of the High Court had no power to dismiss the appellant ;

2. Even if the Chief Justice had such power whether he could not delegate the enquiry into the charges to another Judge but should have made the enquiry himself ; and

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3. Whether the order of dismissal by the Chief Justice could have been passed without previous consultation with the Public Services Commission as provided by Art. 320 of the Constitution.

Held (1) that the Chief Justice was competent to dismiss the appellant because both by virtue of the provisions of clause 8 of the Letters Patent of the Calcutta High Court read with clause 4 of the same as well as Arts. 229(1), 313 and 367(1) of the Constitution read with s. 16 of the General Clauses Act, the power of appointment includes the power of dismissal;

(2) the objection to the validity of dismissal on the ground that the delegation of enquiry amounted to a delegation of power is without substance because the exercise of power to appoint or dismiss an officer is the exercise not of a judicial power but of an administrative power and it is well settled that a statutory functionary exercising such a power cannot be said to have delegated his function merely because he has deputed a responsible and competent official to enquire and report; and

(3) it was not necessary to have the previous consultation with the Public Service Commission for the dismissal of the appellant by the Chief Justice because Art. 320(3) of the Constitution taken as a whole is inconsistent with Art. 229 of the Constitution and also because the language thereof is not applicable to the High Court Staff.

North-West Frontier Province v. *Suraj Narain Anand* ([1948] L.R. 75 I.A. 343), *Barnard* v. *National Dock Labour Board*, ([1953] 2 Q.B. 18, 40), *Board of Education* v. *Rice* ([1911] A.C. 179), and *Local Government Board* v. *Arlidge* ([1915] A.C. 120), referred to.

CIVIL APPELLATE JURISDICTION: CIVIL APPEALS Nos. 245 and 202 of 1953.

Appeal under Article 132(1) of the Constitution of India from the judgment and order dated the 27th January 1953 of the Calcutta High Court in Matter No. 139 of 1952.

Ranadeb Chaudhry, Anil Kumar Das Gupta and *Sukumar Ghose*, for the appellant.

S. M. Bose, Advocate-General for West Bengal (*B. Sen* and *P. K. Bose*, with him) for the respondent.

1955. December 23. The Judgment of the Court was delivered by

JAGANNADHADAS J.—This is an appeal by leave of the High Court of Calcutta under article 132(1) of the Constitution. The appellant before us was the

Registrar and Accountant-General of the High Court at Calcutta on its Original Side. He was appointed to the post by the Chief Justice of the High Court on the 4th March, 1948 and confirmed therein on the 15th of November, 1948. He was dismissed therefrom with effect from the 1st September, 1951, by an order of the Chief Justice dated the 3rd September, 1951. There were various charges against him and Mr. Justice Das Gupta was deputed by order of the Chief Justice dated the 28th May, 1951, to make an enquiry and submit a report. Mr. Justice Das Gupta made a full enquiry and submitted his report on the 11th August, 1951, in which he exonerated the appellant in respect of some of the charges but found him guilty in respect of the other charges. The learned Judge expressed his conclusion as follows:

"Mr. Bose (the appellant) must be held to be guilty of misconduct and dishonest conduct and (that) he is unfit to hold the office of Registrar of the Original Side of this Court".

The Chief Justice issued to the appellant a notice on the 16th August, 1951, intimating that he agreed with the report after careful consideration thereof and asking him to show cause why he should not be dismissed from his post. The appellant was given a hearing by the Chief Justice on the 31st August, 1951. The order dated the 3rd September, 1951, of the Chief Justice dismissing the appellant from his office, a copy of which was served on him, runs as follows:

"A full and thorough enquiry was held by Mr. Justice K. C. Das Gupta into the charges made against Sri P. K. Bose the Registrar of the Original Side of this Court. Sri P. K. Bose was represented by eminent Counsel and every opportunity was given to him to meet the charges and put forward his explanation and defence. The learned Judge however in a full and very carefully considered report found Sri P. K. Bose guilty of serious charges involving moral turpitude and dishonesty and further he was of opinion that Sri P. K. Bose was by reason thereof unfit to hold the said office of Registrar.

I considered this report and the evidence most

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anxiously and found myself in entire agreement with the learned Judge. Sri P. K. Bose was, in my view, clearly guilty of the matter comprised in the charges specified by Mr. Justice K. C. Das Gupta. I considered that *prima facie* the conduct of Sri P. K. Bose warranted dismissal and I therefore gave him notice under article 311(2) of the Constituion of India to show cause against the action proposed against him, namely, dismissal.

On the 31st August, 1951, Sri P. K. Bose showed cause before me and I heard Sri Sachin Chaudhri his counsel and Sri P. K. Bose personally. In all the circumstances this is not a case in which I can properly show any leniency. Sri P. K. Bose has abused the trust and confidence reposed in him and has been found guilty of serious malpractices and dishonesty. Conduct such as this of an officer of the status of the Registrar of the Original Side of this Court is unpardonable and must be dealt with severely. I therefore dismiss Sri P. K. Bose from his office as Registrar of the Original Side of the Court, the dismissal to take effect from the 1st September, 1951.

Let a copy of this order be served on Sri P. K. Bose".

On the 25th January, 1952, the appellant submitted a petition to the Governor of West Bengal for cancellation of the above order. He received intimation dated the 9th July, 1952, that the "Governor declines to interfere on his behalf". Thereupon he filed an application to the Chief Justice for review of the prior order of dismissal. It may be mentioned that it was Chief Justice, Sir Arthur Trevor Harries, who had initiated the proceedings against the appellant and passed the order of dismissal. He retired in June, 1952. The application for review was made to the successor Chief Justice, Shri P. B. Chakravarti, on the 11th September, 1952. This application was rejected on the 16th September, 1952. Thereafter on the 24th November, 1952, i.e., more than an year after the order of dismissal, a writ application was filed on the Original Side of the High Court under article 226 of the Constitution against the Hon'ble

the Chief Justice of the High Court "for calling upon him to bring up the records of the proceedings relating to his dismissal, in order that justice may be done by quashing or otherwise dealing with the said proceedings and the said order dated the 3rd September 1951, purporting to terminate his services and for directions being given to the Chief Justice to desist from giving effect to or acting in any manner under the said order". On the presentation of the application the learned Judge on the Original Side, Mr. Justice Bose, issued a rule *nisi* calling upon the Hon'ble the Chief Justice to show cause why an order in the nature of a writ as asked for should not be made. This order was duly served and on its return the learned Judge made an order referring the hearing of the application to a Special Bench of three Judges as per the rules of the Court. Accordingly the petition was, under the directions of the Chief Justice, heard by three learned Judges of the High Court, who after elaborate hearing and consideration of the points urged on behalf of the appellant dismissed the application. Leave to appeal to this Court was, however, granted by them under article 132(1) on the ground that the case involves substantial questions of law relating to interpretation of the Constitution.

The main points that have been urged by the appellant before us, as before the High Court, are that—

(1) the Chief Justice of the High Court had no power under the law to dismiss him;

(2) even if he had the power, he could not delegate the enquiry into the charges, to another Judge but should have enquired into the same himself; and

(3) in any case the order of dismissal could not have been passed in the absence of previous consultation with the Public Service Commission of the State as provided under article 320 of the Constitution.

On behalf of the respondent, i.e., the Hon'ble the Chief Justice of the High Court at Calcutta, the learned Advocate-General of West Bengal has

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appeared before us. In addition to controverting the correctness of the above contentions raised on behalf of the appellant, he strongly urged that—

(1) no writ could issue from the High Court against its own Chief Justice;

(2) the order of the Chief Justice, the validity of which is being challenged, is a purely administrative order against which no application for writ is maintainable; and

(3) this was not a case in which having regard to all the circumstances, any application by way of a writ should have been entertained.

The points urged on behalf of the appellant may first be taken up. The most important out of them is the one relating to the authority of the Chief Justice to pass the order of dismissal as against the appellant.

It is beyond dispute that the Chief Justice is the authority for appointing the appellant. It was in fact the Chief Justice who appointed the appellant and confirmed him. But it is strongly urged that he had not the power to dismiss. This argument is based on the assumption that the appellant falls within the category of public servants who are governed by the Civil Services (Classification, Control and Appeal) Rules, (hereinafter referred to as the Civil Services Rules) of the year 1930 as amended from time to time and that the said rules continue to apply, to an officer holding the post which he did, even after the Government of India Act, 1935, and later the Constitution of India of 1950 successively came into force. The argument recognises the fact that dismissal is a matter which falls within conditions of service of a public servant as held by the Privy Council in *North-West Frontier Province* v. *Suraj Narain Anand*(1) and that the power of making rules relating to conditions of service of the staff of the High Courts is vested in the Chief Justice of the Court under section 242(4) taken with section 241 of the Government of India Act, 1935, as also under article 229 (2) of the Constitution of India, 1950. But

(1) [1948] L. R. 75 I. A. 343.

it is said that no such rules have been framed by the Chief Justice, and that therefore by virtue of section 276 of the Government of India Act, 1935, and article 313 of the Constitution, the Civil Services Rules continued to apply to him. It is necessary to examine the correctness of these assumptions.

The Civil Services Rules were framed by the Secretary of State in Council under powers vested in him by section 96-B (2) of the Government of India Act, 1915, as amended in 1919. These rules were framed on the 19th June, 1930, and published on the 21st June, 1930. It is desirable therefore to consider the position relating to the staff of the High Courts before that date. It is not disputed that the said position was governed by the Letters Patent of the High Court. Clause 8 of the Letters Patent of 1865 as amended in 1919, which continues to be operative, as also clause 4 thereof, are relevant for the present purpose. They are as follows:

"8. We do hereby authorize and empower the Chief Justice of the said High Court of Judicature at Fort William in Bengal, from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed by the Governor-General in Council, to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of justice, and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent. And it is Our further will and pleasure and We do hereby for Us, Our heirs and successors give, grant, direct, and appoint, that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice shall, from time to time, appoint for each office and place respectively, and as the Governor-General in Council shall approve of: Provided always, and it is Our will and pleasure, that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court, so long as they shall hold their respective offices; but

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this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed by the Governor-General in Council, and to absent himself from the said limits during the term of such leave, in accordance with the said rules".

"4. We do hereby appoint and ordain, that every clerk and ministerial officer of the said High Court of Judicature at Fort William in Bengal, appointed by virtue of the said Letters Patent of the Fourteenth of May, One thousand eight hundred and sixty-two, shall continue to hold and enjoy his office and employment, with the salary thereunto annexed, until he be removed from such office and employment; and he shall be subject to the *like power of removal, regulations, and provisions if he were appointed by virtue of these Letters Patent*".

It will be noticed that clause 8 specifically vests in the Chief Justice the power of appointment, but makes no mention of the power of removal or of making regulations or provisions. But it is obvious from the last portion of clause 4 that such power was taken to be implicit under clause 8 and presumably as arising from the power of appointment.

It may be mentioned that under clause 10 of the Charter of the Supreme Court of Calcutta issued in 1774, the said Court also was in specific terms "authorized and empowered from time to time, as occasion may require, to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of justice". 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. Sir Charles Wood, the then Secretary of State for India in paragraph 10 of his dispatch to the Governor-General dated the 17th May, 1862, (on the formation of the new High Courts) stated as follows:

"The Supreme Court exercises an authority entirely independent of the Government in respect of

its ministerial officers".

It is this power and authority along with other judicial power and authority that was succeeded to by the High Courts (on their formation in supersession of the Supreme and Sadar Courts) by virtue of section 9 of the Indian High Courts Act, in the following terms.

"Each of the High Courts to be established under the Act shall have and exercise.....all jurisdiction and every power and authority whatsoever in any manner vested in any of the Courts..... .....abolished under this Act....."

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.

There can be no doubt that this position continued at least until the Government of India Act, 1915. Now, section 106 of the Government of India Act, 1915, in terms continued the above by providing that the jurisdiction of the High Court would "include all such powers and authority over and in relation to the administration of justice including power to appoint clerks and other ministerial officers of the Court as are vested in them by Letters Patent". It follows that the position continued to be the same even under the Government of India Act, 1915, at any rate up to 1930, when the Civil Services Rules came into operation. All the powers under the Letters Patent were, however, subject to alteration by competent legislative authority by virtue of clause 44 of the Letters Patent. Clause 8 of the Letters Patent itself provided that the power of appointment of the Chief Justice was to be "subject to rules and restrictions which may be prescribed by the Governor-General in Council". Now, the Civil Services Rules were made by the Secretary of State in Council under section 96-B of the Government of India Act, 1915. It is the case of the appellant that though the

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Civil Services Rules framed by virtue of delegated power under the Act could not override the specific power of appointment vested in the Chief Justice by virtue of section 106 thereof, they would override the alleged implications of that power such as the power of dismissal and power to frame rules relating to conditions of service in so far as they are specifically provided for under the Civil Services Rules. It is further urged that the said situation continues up to date by virtue of section 276 of the Government of India Act, 1935 and article 313 of the Constitution. Now, the appellant is a person who was appointed in 1948 and dismissed in 1951. It is, therefore, desirable in the first instance to examine the situation under the Government of India Act, 1935 and under the Constitution of 1950 on the assumption that the Civil Services Rules made a change in the prior situation so far as the High Court staff is concerned and applied thereto between 1930 and 1935.

Under the Government of India Act, 1935, the position relating to the Civil Services of the Crown in India is contained in a number of general provisions in Chapter II of Part X thereof. Section 240(1) reiterates what was first statutorily declared by section 96-B of the 1915 Act, viz., that except as expressly provided by the Act every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure. Section 241 provides for the recruitment and conditions of service of such persons and prescribes the various authorities who can make the appointments and frame the rules relating to conditions of service. Section 242(4), in so far as it is relevant for the present purpose, provides that section 241 in its application to appointments to and to persons serving on the staff attached to a High Court shall have effect as if, in the case of a High Court, for any reference to the Governor in paragraph (b) of section (1) in paragraph (a) of subsection (2) and in sub-section (5), there was substituted a reference to the Chief Justice of the Court. Making the necessary substitutions as prescribed

above, the statutory provisions in the Government of India Act 1935, relating to recruitment and conditions of service of the staff of the High Court may be read as follows :

"(1) Appointments to the Civil Services and Civil posts under the Crown in India in relation to the staff attached to the High Court shall be made by the Chief Justice or such person as he may direct.

(2) The conditions of service of persons serving His Majesty in relation to the staff attached to the High Court shall be made by the Chief Justice of the High Court or by some person or persons authorised by him to make the rules for the purpose.

Provided that—

(a) the Governor may in his discretion require that in such cases as he may in his discretion direct no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the Provincial Public Service Commission;

(b) rules made under sub-section (2) by a Chief Justice shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor".

These sections, while keeping intact the power of appointment of the members of the staff of the High Court with the Chief Justice as contained in the Letters Patent, provide, statutorily for the first time and in express terms what was implicit in clause 8 of the Letters Patent, viz., that the power to regulate and frame rules relating to conditions of service governing such staff is also vested in the Chief Justice subject however to two limitations indicated by the provisos mentioned above. The corresponding provisions in the present Constitution relating to the powers of the Chief Justice in relation to the recruitment and service conditions of the staff of the High Court are almost identical and are contained in article 229. They are as follows:

"229. (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of

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the Court or such other Judge or officer of the Court as he may direct:

Provided that the Governor of the State in which the High Court has its principal seat may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by trules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose:

Provided that the rules made under this clause, shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State in which the Court has its principal seat".

It does not appear from the record that any rules have been made by the Chief Justice of the Calcutta High Court, at any rate, in so far as they may be applicable to the Registrar of the Original Side of the High Court. On the assumption, therefore, that the Civil Services Rules applied to the case of a person in his position between 1930 and 1935, it has got to be seen whether they continue to be so applicable. The relevant provisions in this behalf are section 276 of the Government of India Act, 1935, and article 313 of the Constitution. They are as follows:

"*Section* 276: Until other provision is made under the appropriate provisions of this Part of this Act, any rules made under the Government of India Act relating to the Civil Services of, or civil posts under, the Crown in India which were in force immediately before the commencement of Part III of this Act, shall, notwithstanding the repeal of that Act, continue in force so far as consistent with this Act, and shall be deemed to be rules made under the appropriate provisions of this Act".

"*Article* 313: Until other provision is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as an all-India service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution".

Now, it has to be observed that the continuance, under section 276 of the Government of India Act, 1935, of the Civil Services Rules, could only be in so far as such continuance may be consistent with the new Act. Further in their application to the High Court staff, the rules are to be deemed to be rules made under the appropriate provisions of the Act. The rules, therefore, must be deemed to be rules made by the Chief Justice consistently with the scheme and the provisions of the Act relating to the High Court staff which specifically vest in him the powers of appointment and of the regulation of conditions of service including the power of dismissal. Such continuance, therefore, can only operate by a process of adaptation implicitly authorised by the very terms of section 276. It would follow that, in their continued application to the High Court staff, the word "Governor" has to be read as substituted by the word "Chief Justice" wherever necessary in the same way as section 242(4) of the Act requires the provisions of section 241 to be read as though any reference to the Governor therein is substituted by a reference to the Chief Justice of the High Court. 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 disciplinary control merely because he did not choose to make any fresh rules and was content with the continued appli-

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cation of the old rules. Now, the relevant provision in the Civil Services Rules which deals with disciplinary action including dismissal is rule 52 thereof. That rule shows that "the Governor-General in Council or Local Government of a Governor's Province may impose any of the penalties specified in rule 49 (which includes dismissal) on any person included in any of the classes 1 to 5 specified in rule 14 who is serving under the administrative control of the Governor-General in Council or the Local Government, as the case may be". This rule, if it originally applied to the High Court staff, must after 1935 be read by substituting "Chief Justice" in the place of "the Local Government" wherever it occurs therein and making other consequential alterations. Thus read, there can be no doubt that as from the commencement of the Government of India Act, 1935, the power of dismissal of a member of the High Court staff including, a person in the position of the appellant, would vest in the Chief Justice. This would be so even apart from the normal implication of the power of appointment specifically recognised under the Act. It follows that even on the assumption that Civil Services Rules applied between 1930 and 1935 to the High Court staff their continuance after 1935 makes a change in the dismissing authority and the power of dismissal is vested in the Chief Justice. That being the correct position prior to 1950, the Constitution has made no change in this respect and article 313 would also continue rule 52 of the Civil Services Rules as above adapted. It would, therefore, follow that, at any rate, from the time of passing of the Government of India Act, 1935, as also under the Constitution, the power of dismissal vests in the Chief Justice notwithstanding that no specific rules have been made in this behalf by the Chief Justice.

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 dis-

missal. This results from section 16 of the General Clauses Act which by virtue of article 367(1) of the Constitution applies to the construction of the word "appointment" in article 229(1). Section 16 of the General Clauses Act clearly provides that the power of "appointment" includes the power "to suspend or dismiss".

In view of the clear conclusion we have arrived at as above, we do not consider it necessary to deal with the arguments addressed to us on both sides as to the applicability or othrewise of the Civil Services Rules to the High Court staff, including a person in the position of the appellant, and we express no opinion thereon. The main contention, therefore, of the appellant as to the competency of the Chief Justice to pass the order of dismissal against him fails.

The further subordinate objections that have been raised remain to be considered. The first objection that has been urged is that even if the Chief Justice had the power to dismiss, he was not, in exercise of that power, competent to delegate to another Judge the enquiry into the charges but should have made the enquiry himself. This contention proceeds on a misapprehension of the nature of the power. As pointed out in *Barnard* v. *National Dock Labour Board*(1) at page 40, it is true that "no judicial tribunal can delegate its functions unless it is enabled to do so expressly or by necessary implication". But the exercise of the power to appoint or dismiss an officer is the exercise not of a judicial power but of an administrative power. It is nonetheless so, by reason of the fact that an opportunity to show cause and an enquiry simulating judicial standards have to precede the exercise thereof. It is well-recognised that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report. That is the ordinary mode of exercise of any administrative power. What cannot be delegated except where the law specifically so provides—is the ultimate responsibility for the exercise

(1) [1953] 2 Q. B. 18, 40.

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of such power. As pointed out by the House of Lords in *Board of Education* v. *Rice*(1), a functionary who has to decide an administrative matter, of the nature involved in this case, can obtain the material on which he is to act in such manner as may be feasible and convenient, provided only the affected party "has a fair opportunity to correct or contradict any relevant and prejudicial material". The following passage from the speech of Lord Chancellor in *Local Government Board* v. *Arlidge*(2) is apposite and instructive.

"My Lords, I concur in this view of the position of an administrative body to which the decision of a question in dispute between parties has been entrusted. The result of its enquiry must, as I have said, be taken, in the absence of directions in the statute to the contrary, to be intended to be reached by its ordinary procedure. In the case of the Local Government Board it is not doubtful what this procedure is. The Minister at the head of the Board is directly responsible to Parliament like other Ministers. He is responsible not only for what he himself does but for all that is done in his department. The volume of work entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through his officials, and he has discharged his duty if he sees that they obtain these materials for him properly. To try to extend his duty beyond this and to insist that he and other members of the Board should do everything personally would be to impair his efficiency. Unlike a Judge in a Court he is not only at liberty but is compelled to rely on the assistance of his staff".

In view of the above clear statement of the law the objection to the validity of the dismissal on the ground that the delegation of the enquiry amounts to the delegation of the power itself is without any substance and must be rejected.

The second objection that has been taken is that even if the power of dismissal is vested in the Chief Justice, the appellant was entitled to the protection

(1) [1911] A.C. 179, 182. (2) [1915] A.C. 120, 133.

of article 320(3)(c) of the Constituion. It is urged that the dismissal in the absence of consultation with the Public Service Commission of the State was invalid. There can be no doubt that members of the staff in other Government departments of the Union or the State are normally entitled to the protection of the three constitutional safeguards provided in articles 311(1), 311(2) and 320(3)(c). Article 320(3)(c) so far as it is relevant for the present purpose, runs as follows:

"The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters".

The phrase "all disciplinary matters affecting a person" is sufficiently comprehensive to include any kind of disciplinary action proposed to be taken in respect of a particular person. The question for consideration, therefore, is whether a person belonging to the staff of a High Court is within the scope of the phrase "a person serving under the Government of India or the Government of a State in a civil capacity". The learned Judges of the High Court were of the opinion that article 320(3) can have no application to the present case. In their view the provisions of article 320(3) would be inconsistent with the power vested in the Chief Justice of a High Court under article 229, as regards the appointment of officers and servants of a High Cout and hence also of dismissal or removal and as regards the framing of rules prescribing conditions of service of such officers or servants. They also point out that the proviso to article 229(1) indicates the requirement that the State Public Service Commission should be consulted only in respect of the specific cases of future appointments and that too if the Governor of the State so requires by rule. They take this and the fact that under the Constitution the provisions relating to High Court staff are taken out of Part XIV relating to the services, as imply-

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ing, that in the exercise of the powers vested in the Chief Justice under article 229, consultation with the State Public Service Commission in respect of any other matter must be taken to have been excluded. This reasoning is not without force. Undoubtedly there is much to be said for the view that article 320(3) taken as a whole is inconsistent with article 229. But it is possible to treat the requirement of prior consultation under article 320(3) (c) which relates to disciplinary action against individual Government employees and which is in the nature of an important constitutional safeguard for individual government employees as standing on a somewhat different footing from that under article 320(3) (a) or (b) which relate to general matters relating to recruitments, appointments, etc. Prior consultation in respect of individual cases may not be considered necessarily inconsistent with the actual exercise of the overriding power of the Chief Justice in such cases. While, therefore, recognising the force of the view taken by the High Court, it appears desirable to consider the requirement under article 320(3)(c) taken by itself with reference to the actual terms thereof, in view of the importance of this provision as a constitutional safeguard in cases to which it applies.

A scrutiny of the provisions in Chapter I of Part XIV of the Constitution relating to the services shows that the various articles in this Chapter designate the services to which the articles relate by a variety of terminology. Under article 309, the appropriate Legislature is vested with the power to regulate recruitment and conditions of service "of persons appointed to public services and posts in connection with the affairs of the Union or of any State". Under article 310 "every person who is a member of a civil service of the Union or holds any civil post under a State" holds office during the pleasure of the President or, as the case may be, of the Governor or of the Rajpramukh of the State. Under article 311 the two constitutional safeguards, viz., (1) of not being liable to 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, and (2) of not being liable to be dismissed or removed by an authority subordinate to that by which he was appointed, are available to "a person who is a member of a civil service of the Union or of a civil service of a State, or holds a civil post under the Union or a State". Under article 320(3) (c) however, the requirement of consultation with the appropriate Public Service Commission on disciplinary matters is available to "a person serving *under* the Government of India or the Government of a State in a civil capacity". A close scrutiny of the terminology so used shows a marked departure in the language of article 320(3)(c) from that in articles 310 and 311. Officers and members of the staff attached to a High Court clearly fall within the scope of the phrase "persons appointed to public services and posts in connection with the affairs of the State" and also of the phrase "a person who is a member of a civil service of a State" as used in articles 310 and 311. The salaries of these persons are paid out of the State funds as appears from article 229(3) which provides that the administrative expenses of a High Court including all salaries, allowances and pensions payable to or in respect of officers and servants of the High Court, are chargeable upon the Consolidated Fund of a State. The item relating to such administrative expenses has to form part of the annual financial statement to be presented to the State Legislative Assembly under article 202 and estimates thereof can form the subject matter of the discussion in the Legislature under article 203(1). They must, therefore, be taken "to hold posts in connection with the affairs of the State and to be members of the civil service of the State". But can it be said that members of the High Court staff are "persons serving *under* the Government of a State in a civil capacity" which is the phrase used in article 320(3)(c). The use of different terminology in the various articles was not likely to have been accidental. It is to be noticed that even article 320 in its various clauses uses different phrases. Article 320 (1) refers to "appoint-

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ments to the services of the Union and the services of the State" and the proviso to article 320(3) refers to "services and posts in connection with the affairs of the Union and to services and posts in connection with the affairs of the State". It appears, therefore, not unlikely that in using somewhat different phraseology, the intention was to demarcate the staff of the High Courts from the other civil services of the Union or the State. The phrase "persons serving under the Government of India or the Government of a State" seems to have reference to such persons in respect of whom the administrative control is vested in the respective executive Governments functioning in the name of the President or of the Governor or of a Rajpramukh. The officers and staff of the High Court cannot be said to fall within the scope of the above phrase because in respect of them the administrative control is clearly vested in the Chief Justice, who under the Constitution, has the power of appointment and removal and of making rules for the conditions of services. Articles 53, 77, 154 and 166 of the Constitution show that while the executive power of the Union or the State is vested, respectively, in the President or the Governor and that executive action is to be taken in their respective names, such action is the action of the Government of India or the Government of a State. But the administrative action of the Chief Justice is outside the scope of these articles. It appears therfore that in using the phrase "Government of India and Government of a State" in article 320(3) (c), the Constitution had in view the above mentioned demarcation. A close comparison of the terminology used in the corresponding provisions of the Government of India Act of 1935 also seems to confirm this demarcation. Section 290 (1) of the said Act refers to "every person who is a member of a civil service *of the Crown* in India or holds any civil post *under the Crown* in India" while section 266(3) (c) relates to "a person serving *His Majesty* in a civil capacity in India". A perusal of the main paragraph of sub-section (3) of section 266 clearly shows that it has reference to three cate-

gories of services (1) Secretary of States services, (2) Federal services *under* the Governor-General, and (3) Provincial Services *under* the Governor. In the context of this section, the comprehensive phrase "serving *His Majesty*" seems to have been used as comprising only the above three services and should be exclusive of the staff of the High Court. The fact that different phrases have been used in the relevant sections of the Government of India Act and the Constitution, relating to the constitutional safeguards in this behalf appears to be meant to emphasise the differentiation of the services of the High Court from other services, and to place the matter beyond any doubt as regards the non-applicability thereto of this constitutional protection. It may be noticed that while the constitutional safeguards under article 311 are available to every person in the civil service, the safeguard in article 320(3) (c) is one capable of being taken away by regulations to be made by the President or Governor. The Constitution itself appears, therefore, to have classed this safeguard on a different footing. This may well have been intended not to apply to the High Courts. Therefore, both on the ground that article 320(3) (c) would be contrary to the implication of article 229 and on the ground that the language thereof is not applicable to the High Court staff, we are of the opinion that for the dismissal of the appellant by the Chief Justice, prior consultation with the Public Service Commission was not necessary. We accordingly hold that the appellant was not entitled to the protection under article 320(3)(c). It follows that none of the three contentions raised on behalf of the appellant, i.e., (1) as to the power of the Chief Justice to dismiss him, (2) as to his competence to delegate the enquiry to Mr. Justice Das Gupta, and (3) as to his obligation to consult the State Public Service Commission, have been substantiated. This application must accordingly fail on the merits.

This would be enough to dispose of the case against the appellant. The learned Judges of the High Court have also dealt at some length with the question as

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to the maintainability of an application for a writ in a case of this kind and of the availability of any remedy by way of a writ against the action of the Chief Justice, whether administrative or judicial. Arguments in this behalf have also been strongly urged before us by the learned Advocate-General of West Bengal. In the view, however, that we have taken as to the contentions raised before us regarding the validity of the order of dismissal, we do not feel called upon to enter into the discussion relating to the availability of the writ. We express no opinion on the questions so raised. We consider it, however, desirable to say that our view that the exercise of power of dismissal of a civil servant is the exercise of administrative power may not necessarily preclude the availability of remedy under article 226 of the Constiution in an appropriate case. That is a question on which we express no opinion one way or the other in this case.

In the result the appeal must be dismissed with costs.

Along with this appeal, the appellant filed an application to this Court for leave under article 136 to appeal against the orders dated the 3rd September, 1951, and 16th September, 1952, dismissing him from service and declining to review it. In view of our judgment just delivered, that application must also be rejected.