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the Inquiries Act would amount to contempt of the criminal court, we are clearly of opinion that it is wholly undesirable that the enquiry under the Inquiries Act should be held at the same time when the trial before the criminal court is going on. No particular reason has been shown to exist which makes the immediate commencement of the enquiry essential or otherwise desirable. We think it proper therefore that the enquiry under the Inquiries Act should not proceed so long as the appellant's complaint against Dhingra is not finally disposed of.

While therefore, we have come to the conclusion that the High Court has rightly refused to issue to the appellant writs prayed for to quash the Government's order for enquiry against him and the other prayers mentioned in the petition, we direct that the enquiry should not take place so long as the appellant's complaint against Dhingra is not finally disposed of. The parties will bear their own costs.

Appeal dismissed.

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August, 2

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v.
PRATAP SINGH KAIRON AND OTHERS

(S.K. DAS, ACTING C.J., P.B. GAJENDRAGADKAR, A.K. SARKAR, K.N. WANCHOO, M. HIDAYATULLAH, K.C. DAS GUPTA AND N. RAJAGOPALA AYYANGAR JJ.)

Civil Servant—A member of the Indian Civil Service employed in the State of Punjab—Enquiry under order of Governor—whether competent—"Not removable from his appointment without the sanction of Government"—Meaning of—The Public Servants (Inquiries) Act, 1850, *s.* 2.

The appellant joined the Indian Civil Service in 1938 and after serving in other capacities was employed under the Punjab Government since 1948. On May 26, 1961, an enquiry was started against him by the Punjab Government under s. 2 of the Public Servant (Inquiries) Act, 1850. He filed a petition in the Punjab High Court under Article 226 of the Constitution challenging the validity of the order of the Punjab Government but his petition was dismissed. He came to this Court by special leave.

During the hearing of the appeal a question arose whether the Government of the State of Punjab was competent to order the enquiry against the appellant under s. 2 of the Public Servants (Inquiries) Act, 1850. The Bench hearing the appeal was of the opinion that s. 2 required three conditions to be satisfied before a formal and public enquiry could be ordered. The first condition was that the Government should be of opinion that there were good grounds for making such a formal and public enquiry. The second condition was that the enquiry could be directed by the Government against a servant in the service of that Government. The third condition was that the person should not be removable from his appointment without the sanction of that Government. The Bench held that the first two conditions were satisfied in the present case. As regards the third condition, the Bench referred to a larger Bench the question as to the meaning of the following words in section 2 of the Inquiries Act: "not removable from his appointment without the sanction of the Government."

Held by Das Acting C. J., Gajendragadkar, Sarkar, Hidayatullah, JJ. (Wanchoo, Das Gupta and Ayyangar JJ. dissenting) that the third condition in s. 2 of the Public Servants (Inquiries) Act, 1850 was also satisfied in this case.

Per, Das, Acting C. J., Gajendragadkar, Sarkar and Hidayatullah, JJ: Section 23 of the Act furnishes the key to find out which Government is to hold the inquiry. Where the officer is in the service of a particular Government and is also employed under it the position is clear. When Officers in the service of the Central Government are deputed to States and *vice versa* and while they are on such deputation, they are "employed under" the Government to which they are deputed. If by "employed under" in s. 2 were meant "in the service of", s. 23 of the Public Servants (Inquiries) Act, 1850, would hardly be needed. If an officer is in the service of the Central Government and is also serving with the Central Government, the State Government cannot possibly hold an enquiry. The same is true of officers in the service of the State Governments and serving with the State Governments. In their case the Central Government can have no hold. It is only when there is an exchange of officers between Governments that questions arise which Government should make the enquiry and the test is that it is the Government under which the officer is employed at the time. The expression "in the service of that Government" in s. 2 is the equivalent of "employed under that Government" in the context where it occurs.

The word "appointment" can only mean a 'post', 'station' or 'office' and not the whole service as such. Removal cannot be the equivalent of loss of service but the loss of post, station or office. Section 2 is intended to apply only to an officer whose 'post', 'station' or 'office' can only be lost under orders of the appropriate Government and not any lesser authority. In this sense, the action of the Punjab Government was clearly within its power. The

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key furnished by s. 23 must be read into s. 2 and the section then construed. To construe the Act in the manner suggested by the appellant would really mean that in respect of I.C.S. or other such officers serving with the State Governments, there cannot be any enquiry by the Central Government because they are employed under the State Governments, and no enquiry by the State Governments because they are not removable from service in the limited sense by the State Governments. The same difficulty would arise in respect of State employees serving with the Central Government or State Governments other than their own.

Per Sarkar J.—Doubted the correctness of the view expressed in *Sardar Kapur Singh* v. *Union of India* [1960] 2 S.C.R. 569 as to the meaning of the word "Government" in s. 2 of the Act but as the question referred was based on that view, its correctness could not be disputed in the reference.

Per, *Wanchoo, Das Gupta and Ayyangar JJ.*

Held, that the Government of the Punjab is not the appropriate Government vested with powers to direct an enquiry under the Public Servants (Inquries) Act, 1850, against the appellant.

The terms of s. 23 have to be read in each of the three places where the word "the Government" occur in s. 2. "The Government" when it occures first in s. 2 would mean only the State of Punjab in which the appellant is employed. Where "the Government" occurs for the second time, it also means the Punjab Government. As regards the use of the expression "the Government" for the third time in the phrase "not removable from his appointment without the sanction of the Government", the only meaning which could reasonably be attributed would be that it is that Government which is competent to terminate his employment. The State of Punjab is not the Government which is capable of removing the appellant from his appointment. Hence, it is clear that the third condition is not satisfied.

The condition that the officer against whom proceedings are taken must be one who is amenable to the disciplinary control of the Government which initiates the enquiry and is competent to inflict upon him the punishment of removal has been the basic ratio and purpose of the Act of 1850 ever since it was enacted. The change effected by the amendment brought in 1897 retained this characteristic, though it gave an over-riding power to the Governor General to initiate proceedings in all cases whether or not the officer was serving a Local Government or the Central Government. It could not therefore be that by reason of the Adaptation Order under the Government of India Act, 1935, a vital change was made which upset this basic feature and conferred a power upon a Provincial Government to institute an enquiry even when such a Government had not the power to punish him by way of removal.

Sardar Kapur Singh v. *The Union of India,* [1960] 2 S.C.R. 569; *Imperatrix* v. *Bhagwan Devraj,* I.L.R. 4 Bom. 357; *Angelo* v. *Kandan Manjhi,* 41 Criminal Law Journal 221; *Herron* v. *Rathmines,* [1892] A.C. 498; *Assam Railways and Trading Co. Ltd.* v. *Inland Revenue Commissioners,* [1935] A.C. 445; *Millar* v. *Taylor,* (1769) 4 Burr. 2303 and *R.* v. *Hertford College,* (1878) 3 Q.B.D. 693, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 75 of 1963.

On reference to larger bench in Appeal by Special Leave from the Judgment and Decree dated August 9, 1961 of the Punjab High Court in Civil Writ No. 954 of 1961.

The appellant appeared in person.

M.C. Setalvad, S.M. Sikri, N.S. Bindra and *P.D. Menon* for the respondents.

ORDER OF REFERENCE

The following Order of the Court was delivered by AYYANGAR J.—The appellant—R. P. Kapur was appointed to the Indian Civil Service in or about 1938. He continued in the service after independence and has, since 1948, been in the service of the Government of Punjab. While so, on May 26, 1961 an order was made in the name of the Governor of Punjab directing an inquiry against the appellant under the Public Servants (Inquiries) Act, 1850. The appellant challenged the validity of this order in a petition that he filed in the High Court of Punjab under Art. 226 of the Constitution and when that was dismissed he has preferred this appeal with the special leave of this Court. This appeal was heard by us in the second week of February, 1963 and judgment was reserved on the 13th of that month. Several points of law and fact were canvassed in the appeal and those will be dealt with in the judgment to be pronounced.

There was one point, however, which did arise on the case but was not fully argued and that related to the proper construction and legal effect of s. 2 of the Public Servants (Inquiries) Act, 1850 which, as it now stands reads :

> "Whenever the Government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour by any person in the service of the

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Government not removable from his appointment without the sanction of the Government, it may cause the substance of the imputations to be drawn into distinct articles of charge, and may order a formal and public inquiry to be made into the truth thereof."

The question we are referring to is whether the Government of the State of the Punjab was competent to make the impugned order against the appellant under this provision on its terms. That question might be formulated in these terms: Under s. 2 there are three conditions which have to be satisfied before a formal and public inquiry might be directed to be made into the truth of the imputations of misbehaviour. They are: (1) the Government should be of opinion that there are good grounds for making such a formal and public inquiry. We have heard full arguments on the question as to whether this condition has or has not been satisfied and it is not necessary to say anything more about it now. (2) The inquiry can be directed under s. 2 by the Government only against a person in the service of that Government. It is obvious that this condition is satisfied and there was no argument raised in regard to it and the decision of this Court in *Sardar Kapur Singh* v. *The Union of India*(1) furnishes a complete answer to any contention that this condition is not satisfied in the present case. (3) The third and the last condition is that the person is "removable from his appointment by or with the sanction of that Government". We are stating here in positive terms what occurs in the section in negative terms. One possible construction of this provision would be that the officer against whom the inquiry is being directed should be capable of being dismissed or removed from service by that Government which is authorised to direct the inquiry. Another interpretation might be that the condition of "removability" only relates to removability from the office which the officer holds for the time being. We are not expressing any opinion as to which of these is the correct view that could be taken of this provision, but we are merely pointing out that the former is one possible construction. If that construction,

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however, be right it would be apparent that the appellant who could not be dismissed or removed from service except by the Government of India, would not fall within those words and consequently he would not be a public servant against whom the State Government of the Punjab could initiate these proceedings.

During the course of the arguments a query was raised as to whether the third condition we have mentioned earlier was satified or not but it was assumed that this point had been considered and decided by this Court in its decision in *Sardar Kapur Singh* v. *The Union of India*(1). On further examination, however, it appears to us that this particular point about the third condition was not the subject of express consideration by this Court on that occasion, for when one looks at the first of the grounds urged by Counsel which is set out on page 576 of the report it reads :

> "That the inquiry could not be directed by the Punjab Government as the appellant was a member of the Indian Civil Service and was not employed under the Government of East Punjab."

As would be seen, this is the second point which we have set out earlier and this was answered by reference to s. 23 of the Public Servants (Inquiries) Act, 1850, but the third point which we have formulated earlier does not appear to have been the subject of express consideration or decision in that case. Since, however, that decision states and proceeds on the basis of all the requirements of s. 2 of the Act having been satisfied, we feel it would not be proper for us to hear arguments on this aspect of the provision.

The point is an important one and its decision is vital for disposing of this appeal. We, therefore, propose to place the case before the Hon'ble the Chief Justice for a reference being made to a larger Bench for considering the question as to the meaning of the words "not removable from his appointment without the sanction of the Government" occurring in s. 2 of the Public Servants (Inquiries) Act, 1850.

The following Opinions of the Court were delivered by HIDAYATULLAH J. (on behalf of S. K. DAS, Acting C.J.,

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P. B. GAJENDRAGADKAR J. and himself).—The appellant Mr. R. P. Kapur, joined the Indian Civil Service in 1938, and after serving in other capacities was employed under Punjab Government since 1948. On May 26, 1961, an inquiry was started against him by the Punjab Government under s. 2 of the Public Servants (Inquiries) Act, 1850. He filed a petition in the High Court of Punjab under Art. 226 of the Constitution impugning the validity of the order of the Punjab Government, but his petition was dismissed. He has now appealed by special leave. During the hearing of the present appeal on an earlier occasion before another Bench, a question arose whether the Government of the State of Punjab was competent to order the inquiry against the appellant under s. 2 of the Inquiries Act. The Bench made this reference for the elucidation of the meaning of certain words in s. 2 of the Inquiries Act, which has been placed before this Bench.

In the Order of Reference, it is observed that s. 2 requires three conditions to be satisfied before a formal and public inquiry can be ordered, and they are :

(1) The Government should be of opinion that there are good grounds for making such a formal and public inquiry ;

(2) The inquiry can be directed under that section by the Government against a person in the service of that Government ;

(3) The person should not be removable from his appointment without the sanction of the Government.

The Order of Reference states that the earlier Bench has heard full arguments in regard to the first condition and the decision on that part of the case will be given in due course. Next, it states that the Bench considers that the second condition is satisfied as held in an earlier decision of this Court reported in *Sardar Kapur Singh* v. *Union of India*(1). The Bench apparently feels no difficulty about the first two conditions requisite for the application of the section.

The Bench, however, is of the view that the words of s. 2 reproduced in the third condition are susceptible of

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different meanings. The Order of Reference states :

> "One possible construction ..... would be that the Officer against whom the inquiry is being directed should be capable of being dismissed or removed from service by that Government which is authorized to direct the inquiry. Another interpretation might be that the condition of 'removability' only relates to removability from office which the officer holds for the time being."

The Order of Reference goes on to point out that if the section means the first, then, as the appellant was removable from service only by the Government of India (that is to say, the President), the Punjab Government could not initiate the present proceedings. According to the Order of Reference, the second condition alone was considered in *Kapur Singh's* case(1), while applying s. 23 of the Act, and condition No. 3 was overlooked. The Order of Reference thus states :

> "Since, however, that decision states and proceeds on the basis of all the requirements of s. 2 of the Act having been satisfied, we feel it would not be proper for us to hear arguments on this aspect of the provision."

Accordingly the Bench has referred the question as to the meaning of the following words in s. 2 of the Inquiries Act :

> "not removable from his appointment without the sanction of the Government."

We are only concerned with the preamble and sections 2 and 23 of the Inquiries Act. We shall presently set out these provisions of the Public Servants (Inquiries) Act, 1850, as they exist today. The original Act was amended in 1897 by the Public Servants (Inquiries) Act, 1897 (1 of 1897), which supplied the present short title of the Act and effected some amendments. Later, certain other amendments were made and s. 23 was recast. In 1937, the Government of India (Adaptation of Indian Laws) Order, 1937, while making certain adaptations in the text of a formal nature, substituted another section in place of the existing s. 23. Further adaptations were made

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by the Adaptation of Laws Order, 1950, but they were of a formal nature.

We shall now set out the relevant parts of the Inquiries Act as they were from time to time :

As in 1850

For regulating inquiries into the behaviour of Public Servants.

Whereas it is expedient to amend the law for regulating inquiries into the behaviour of public servants not removable without the sanction of Government, and to make the same uniform throughout the territories under the Government of the East India Company, it is enacted as follows :

1. ....

2. *When Government consider public enquiry into the conduct of any of its officers necessary, distinct Articles of Charge shall be drawn out.*— Whenever the Government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour by any person in the service of the East India Company not removable from his office without the sanction of the same Government, it shall cause the substance of the imputations to be drawn into distinct Articles of Charge, and shall order a formal public inquiry to be made into the truth thereof.

3 to 22. ....

23. *Interpretation of the word 'Government'.*—The word 'Government' as used in this Act means the Governor-General in Council, the Governor or Deputy Governor of the Presidency of Fort William in Bengal, the Governor in Council of the Presidencies of Fort St. George and Bombay, respectively, and the Lieutenant-Governor of the North-Western Provinces of Bengal, whose sanction is necessary for the removal of the person accused.

....

In 1897, these provisions of the Inquiries Act were amended in three respects, and they were :

(i) In the preamble, the word 'India' was substituted for the words 'the East India Company',

(ii) The marginal note to s. 2 was changed to: "Articles of charge to be drawn out for public inquiry into conduct of certain public Servants",

but no change in the text of the section was made, and

(iii) Section 23 was replaced by the following section:

23. *Powers of Government under this Act by whom exercisable.*—The powers of the Government under this Act may in all cases be exercised by the Governor-General in Council, and when the person accused can be removed from his appointment by the Local Government, those powers may also be exercised by the Local Government.

In 1937, the Adaptation Order replaced the above s. 23 by the following:

"23. *Definition of Government.*—In this Act, 'the Government' means the Central Government in the case of persons employed under that Government and the Provincial Government in the case of persons employed under that Government."

It also substituted the word 'may' for the word "shall" in two places in s. 2.

The corresponding provisions of the Act, as they finally stand today after adaptations in 1950 may now be set out:

"The Public Servants (Inquiries) Act, 1850 (37 of 1850).

(1st November, 1850)."

For regulating inquiries into the behaviour of Public Servants.

WHEREAS It is expedient to amend the law for regulating inquiries into the behaviour of public servants not removable from their appointments without the sanction of Government and to make the same uniform throughout India, it is enacted as follows:—

1. ....

2. Whenever the Government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour by any person in the ser-

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vice of the Government, nor removable from his appointment without the sanction of the Government, it may cause the substance of the imputations to be drawn into distinct articles of charge, and may order a formal and public inquiry to be made into the truth thereof.

3-22. ....

23. In this Act, 'the Government' means the Central Government in the case of persons employed under that Government and the State Government in the case of persons employed under that Government.

24 to 25 ....

It will be seen from the preamble that ever since 1850, the intention was that there should be an uniform law for regulating inquiries into the behaviour of public servants not removable without the sanction of Government and the inquiry was to be made either by the Central Government or by the Governments of the Presidencies (later, of the Provinces and now of the States) and the provisions of sections 2 and 23 between them pointed out which Government it was to be. At every stage of the Inquiries Act 1850, right from the beginning till today, there has always been a key to the solution of the question which Government should take action and it has not been necessary to go to other statutes.

In this case, the short question that has arisen is whether the words 'removable' from his 'appointment' indicate 'removable from service' or merely 'removable from the appointment in the sense of office or post held by the officer'? The solution of this problem must depend primarily upon the language of the Act itself and the interrelation between sections 2 and 23 with such legitimate assistance to construction from any other source as we can get.

The Inquiries Act was not the first of its kind. It was preceded by other Acts in the Presidencies and they provided for inquiries into the conduct of public servants. The argument shortly is that the words 'remove' and 'removable' have come to acquire a special meaning and have frequently been used in statutes dealing with disciplinary actions against public servants in connection

with the termination of services only and that they have been so used in the Inquiries Act. Examples were cited to us from other statutes and rules both past and present to illustrate the use of the words in this restricted sense and it is contended that viewed historically, the word 'remove' must be interpreted as denoting an action resulting in loss of service. In this connection, much is made of the history of such enactments and the phrases used in them some of whom are not the phrases we have to interpret. We shall briefly touch upon this history.

The Inquiries Act, 1850, replaced three statutes operating respectively in Bengal, Madras and Bombay. They were Regulation 26 of 1839 (Bengal), Act XIII of 1843 (Madras) and Act VI of 1838 (Bombay). These three legislative measures followed the same pattern and used almost identical language. Even these three measures were not the first of the statutes of this kind. They were also preceded by other legislative measures which they replaced. In these older statutes, the language employed was different. Thus, Regulation 13 of 1793 of Bengal used the phrase 'offender incapable of serving Government in any capacity', Regulation V of 1803, the phrase 'remove from his service' and Regulation 8 of 1806, the phrases 'to be continued in the employment of the Company' and 'dismission from office'. The emphasis no doubt was largely upon termination of service but then the power was exercisable centrally. When the three Presidencies had their own legislative measures to which we have referred in this paragraph earlier, those measures were to apply to covenanted servants of the Company who were not capable of being dismissed except by the Court of Directors. The provisions of these Acts enjoined the Courts to refer cases of officers 'not removable without sanction of Government' to the Governor whenever a formal inquiry into an imputation of official misconduct was necessary. The Acts, however, were meant for the three Presidencies respectively and did not lay down any method by definition or otherwise to distinguish between the Central Government and the Governments of the Presidencies, or to discover which of the Governments should order the inquiry. Such a provision appear-

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ed for the first time in the Inquiries Act, 1850, and the earlier enactments do not help in interpreting its terms because from the very beginning it contained its own key and extraneous aid was not necessary. The earlier Acts might have used sometimes the word 'remove' to denote 'removal from service' but it is interesting to note that in s. 30 of the Government of India Act, 1858 (21 and 22 Vict. Ch. 106) the text of which is given in the foot-note(*) the word 'removed' was used not only in connection with the termination of service as such but also in connection with 'stations' and 'offices', thus showing that the word was not confined to the inflexible use which is suggested.

There is no doubt that the word 'remove' has been used time and again in statutes and rules as meaning 'termination of service' but that is not the only use. In the Government of India Act, 1858, it was definitely used in a modified sense. There is thus nothing which fixes its use or meaning or robs it of the various shades of meaning it possesses. Our task is not to read a particular meaning into the Inquiries Act and then to construe it. Our task is to see which meaning emerges on a proper interpretation of the Act as a whole.

The original Inquiries Act as also the amendments made in it from time to time was designed to bifurcate the power of inquiry between the Central Government and the local Governments and the word "remove" *simpliciter* which might have had the restricted meaning was never so used. It was first qualified by the words 'from office' and is now qualified by the words 'from his appoint-

*Section 30:—All Appointments to Offices, Commands, and Employment in *India* and all Promotions, which by Law or under any Regulation, Usage, or Custom, are now made by any Authority in *India*, shall continue to be made in *India* by the like Authority, and subject to the Qualifications, Conditions, and Restrictions now affecting such Appointments respectively; but the Secretary of State in Council shall have the like Power to make Regulations for the Division and Distribution of Partonage and Power of Nomination among the several Authorities in *India*, and the like Power of restoring to their Stations, Offices, or Employments, Officers and Servants suspended or removed by any Authority in *India* as might have been exercised by the said Court of Directors, with the Approbation of the Commissioners for the said Affairs of India, if this Act had not been passed.

ment'. The word 'remove' cannot therefore be defined without the qualifying words. We have thus to discover the meaning not of the word 'remove' but of whole phrases 'remove from office' and 'remove from appointments'. The words are not 'remove from service' and never have been, and it is difficult to imagine that this simple phrase would not have occurred to persons wishing to convey that sense. As a different phrase is used and a key furnished, we must construe the phrase 'removable from his appointment' occurring in the second section of the Inquiries Act with the help of the key. The preamble also uses the same expression but it will obviously bear the same meaning. Now the key furnished by s. 23 is merely a definition of the words 'the Government' wherever used in the Inquiries Act. In the preamble, the word 'Government' is used without the definite article as again in s. 25. These refer generally to Governments whether Central or State without seeking to make a distinction between them as stated in the key. In the sections where the expression used is 'the Government', the intention is to make a selection between Governments and only that Government is meant which answers the definition in s. 23.

The definition in s. 23 says that 'the Government' in the Inquiries Act means the Central Government if the public officer is employed under the Central Government, and the State Government if the public officer is employed under the State Government. There is in this way a clear division of all officers likely to be affected by the Inquiries Act into two classes depending upon their employment at the time the inquiry is commenced. The division is rested not upon *service* but upon *employment* because the expression is not 'in the service of' or even 'in the employment of' but the less forcefull one, 'employed under'. It is common knowledge that officers in the service of the Central Government are deputed to the States and *vice versa,* and while they are on such deputation, they are 'employed under' the Government to which they are deputed. If by 'employed under' were meant 'in the service of', the definition in s. 23 would hardly be needed. If an officer is in the service of, say the Central Government and is also serving with the

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Central Government, the State Government cannot possibly hold an inquiry. The same is true of officers in the service of the State Governments and serving with the State Governments. In their case the Central Government can have no hold. It is only when there is an exchange of officers between Governments that a question arises which Government should make the inquiry, and the test furnished by the key is that it is the Government under which the officer is employed at the time.

It was held in *Sardar Kapur Singh's case*(1) that he was 'employed under' the Government of Punjab. No contention was raised in this case that the present appellant was not 'employed under' the Punjab Government. Point No. 2 in the Order of Reference summarized by us above is :

> "(2) The inquiry can be directed under that section (sec. 2) against a person in the service of that Government."

The expression 'in the service of that Government' is apparently the equivalent of 'employed under that Government'. In the Order of Reference in respect of the second point, it is observed :

> "It is obvious that this condition is satisfied and there was no argument raised in regard to it and the decision of this court in *Sardar Kapur Singh* v. *Union of India* furnishes a complete answer to any contention that this condition is not satisfied."

It follows, therefore, that the definition in s. 23 applies to the present appellant's case and the Government under which he is employed is the Government holding the inquiry. This point is not only concluded by the earlier decision of this Court but is expressly withdrawn from the Reference made to us.

We have now to read the key and its answer into s. 2. That secetion uses the expression 'the Government' in three places and each of these places we shall read the Government under which the officer is employed. So read and paraphrased, s. 2 would read something like this :

> "Whenever a Government under which an officer is employed shall be of opinion that there are good grounds for making a formal and public inquiry into

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the truth of any imputation of misbehaviour by an officer in the service of the Government under which he is employed which officer is not removable from his appointment without the sanction of the Government under which he is employed, it may cause the substance of the imputations to be drawn into distinct Articles of Charge and may order a formal and public inquiry to be made into the truth thereof."

The force of the definition must find place in all the three places where the expression 'the Government' has been used. In the section as expanded by us, the words 'in the service of' in the expression 'in the service of the Government under which he is employed' or in the original expression 'in the service of *the* Government', mean 'while serving with' and do not convey the sense of 'employment by'. The word "appointment" can thus only mean a 'post', 'station' or 'office' and not the whole service as such. Removal, therefore, cannot be the equivalent of loss of service but the loss of 'post', 'station' or 'office'. Section 2 is intended to apply only to an officer whose 'post', 'station' or 'office' can only be lost under orders of appropriate Government and not any lesser authority. In this sense, the action of the Punjab Government was clearly exercisable in this case. To construe the Act in the manner suggested would really mean that in respect of I.C.S. or other such officers serving with the State Governments, there cannot be any inquiry by the Central Government, because they are employed under the State Governments, and no inquiry by the State Governments because they are not removable from service in the limited sense by the State Governments. The same difficulty would arise in respect of State employees serving under the Central Government or State Governments other than their own. To be able to say that the inquiry could be made by the other Government, one would have to discard altogether s. 23 as a key and the interpretation placed on the section by this court in *Sardar Kapur Singh's case*(1).

In our opinion, the third condition in s. 2 is also satisfied in this case.

SARKAR J.—On the Order of Reference made in this *Sarkar J.*

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case I am inclined to agree with the view to be expressed by my brother Hidayatullah. That Order proceeds on the basis that the view expressed in *Sardar Kapur Singh* v. *The Union of India*(1) that the word "Government" in the expression "in the service of the Government" in s. 2 of the Public Servants ((Inquiries) Act, 1850, means the Government under which the officer concerned is at the time when the order for inquiry is made holding an office, is correct. I have some doubt as to the correctness of this view. It seems to me that it might well be that the word "Government" there means the Government which originally appointed the officer and whose servant he still continues to be though his services might have been lent to another authority. If this is the correct view, then much of the difficulty that has been felt in this case would disappear and in that case I would have answered the question referred to this bench in a way different from what I am now inclined to do. The question however whether the decision in *Sardar Kapur Singh's* case(1) is right or not, does not arise in the present case and cannot be gone into. For the purpose of this Reference that decision has to be accepted as correct. On that basis I find the view expressed by Hidayatullah J., preferable and I agree with it.

Ayyangar J.

AYYANGAR J.(on behalf of K. N. WANCHOO, K. C. DAS GUPTA JJ. and himself) : The question referred to this Bench relates to the proper Construction of s. 2 of the Public Servants (Inquiries) Act, 1850 (which for convenience we shall refer to as the Act) and in particular of the words "any person in the service of the Government not removable from his appointment without the sanction of the Government", occurring in it. The circumstances in which the reference came to be made are set out in a short order by the referring Bench.

[The Order of Reference extracted here is omitted. Ed.]

Adopting the phraseology used in the Order of Reference the question to be answered is whether the third condition set out in it is satisfied viz., whether the Government of the Punjab is the appropriate Government vested with power to direct an inquiry under the Act against the appellant.

In the Order of Reference two alternative construc-

(1) [1960] 2 S.C.R. 569.

tions of the expression 'not removable from appointment' were suggested and we have now to determine which of them is correct. The submission of Mr. Setalvad appearing for the respondent-State was that the word 'removable' in the context meant not termination of employment as ordinarily understood but a reference to a power to transfer the officer from one appointment or post held by him to another, *i.e.,* competent to impose punishment by way of a reduction in rank. The submission of the appellant who argued his case in person, however, was that 'removable' in the context of its being a removal by way of punishment was a reference to "removal" as known to the Service Rules *viz.,* a removal from the office altogether *i.e.,* virtually a dismissal of the incumbent. The question for our consideration is which of these two interpretations is correct.

Before, however, proceeding to deal with these rival interpretations it is convenient, just to clear the ground, to state that it was not any part of the submissions on behalf of the respondents that it was not an independent statutory requirement of s. 2 that the Government ordering the enquiry should be competent to remove the officer from his appointment [whatever meaning might be attributed to the word 'removable'] besides the other condition that the officer concerned should be in the service of that government. In other words, it was not suggested that the section was capable of the construction that it was sufficient that the officer was employed under that Government and that the 'third condition' was merely an explanation or incident of the second condition *viz.,* of being 'in the service of the Government'.

It would be noticed that there are two words used in the relevant portion of s. 2 on whose proper interpretation the answer to the question referred would turn and they are 'removable' and 'appointment'. We shall first deal with the word 'removal' and later with the other.

The expression 'removable' has been in the Act from the time of its first enactment in 1850 and it occurs not only in s. 2 with which we are primarily concerned but in other places, and as we consider that the history of the legislation relating to inquiries against public servants throws considerable light on the meaning of this term, we shall briefly refer to it. It is only necessary to add that the Act itself has under-

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gone some legislative changes which also are of some relevance in this context but this we shall consider later. When enacted in 1850, the preamble to the Act ran:

> "Whereas it is expedient to amend the law for regulating inquiries into the behaviour of public servants *not removable without the sanction of Government* and to make the same uniform throughout the territories under the Government of the East India Company, it is enacted as follows:"

This preamble would indicate that the Act was intended only for enabling the institution of inquiries into the behaviour of certain classes of public servants, *i.e.,* those who were not removable without the sanction of Government. Section 2, as it originally stood, ran:

> "2. Whenever the Government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour by any person in the service of the East India Company not removable from his office without the sanction of the same Government, it shall cause the substance of the imputations to be drawn into distinct Articles of Charge, and shall order a formal public inquiry to be made into the truth thereof".

The word 'Government' was defined in s. 23 again when originally enacted, in the following terms:

> "The word 'Government' as used in this Act means the Governor-General in Council, the Governor or Deputy Governor of the Presidency of Fort William in Bengal the Governor in Council of the Presidencies of Fort St. George and Bombay, respectively, and the Lieutenant-Governor of the North-Western Provinces of Bengal *whose sanction is necessary for the removal of the person accused.*"

The other sections viz., 3 to 22 & 24 and 25 were in the same form as they now are and we shall reserve the consideration of their relevance for interpreting the relevant expressions used in s. 2 after we have examined certain other matters.

The problem raised by the reference is occasioned by the fact that on the definition of 'Government' in s. 23, in the Act as it now stands, the Government which is competent to "remove" the officer in the sense of removing him from service is not always that Government whom the offi-

cer is serving, for in the case of the members of the All India Services they are appointed by the Union Government and are removable only by that appointing Government, though such officers are allotted to the States and serve under State Governments. This situation should not obscure or deflect the interpretation of the relevant provisions and, in our opinion, for a correct appreciation of the situation, it is necessary to trace historically the provisions relating to the enquiries against public servants of the type we have in the Act. The Act of 1950 was the first uniform law throughout the territories of the East India Company, but it would be both interesting and useful to go beyond and before it for understanding not only the phraseology employed, but the actual import of the expressions used.

The Act of 1850 repealed three enactments which were in force in each of the three presidencies of Bengal, Madras and Bombay—Regulation 26 of 1839 in Bengal, Act XIII of 1843 in Madras and Act VI of 1838 in Bombay, consolidated their provisions and re-enacted a law which was to be applicable to the entirety of the territories under the administration of the East India Company. It would not be necessary to refer to all these three pieces of legislation, for they followed a very similar pattern, using almost identical language as that employed in the Regulation which was in force in Bengal. The earliest of the Bengal Regulations was Regulation 13 of 1793 which underwent several amendments and was finally consolidated into Regulation 26 of 1839 and which was repealed by the Act of 1850. The preamble to this Regulation of 1793 stated that it was made for enacting rules for the appointment of ministerial officers of civil and criminal Courts of Judicature and for regulating their duties including provisions for receiving or charging any acts of corruption and extortion that may be preferred against them. Sub-s. (1) of s. 9 of this Regulation enacted that the ministerial officers of the civil and criminal courts were declared amenable to the Court to which they were respectively attached for acts of corruption or extortion and the courts were empowered to receive any such charges that might be preferred against them. Similarly, the second sub-section vested a similar power in the Sadar Diwani Adalat and the Nizamat Adalat

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which were empowered to receive charges of corruption or extortion against ministerial officers of a Provincial Court of Appeal or of a court of circuit. Elaborate provisions regarding the procedure for the inquiry and trial of these charges were made and when the offence was held to be finally established s. 11 provided that the court by which the final decree may be passed shall transmit a copy of it to Governor-General in Council who, in addition to the penalties or punishments specified in the decree, will, "if there shall appear to him grounds for so doing, declare *the offender incapable of serving Government in any capacity*". It is not necessary to refer to the several Regulations which were enacted between 1793 and the consolidating Regulation 26 of 1839 but it may be of some significance to refer to a few of them in which the phraseology employed in the Act and which we are called on to interpret was used. Thus s. 8 of Regulation V of 1803 which vested in the Sadar Diwani Adalat the jurisdiction to try appeals from decisions of the Provincial Court of Appeal established for the Province ran:

> "If any person shall charge the judge of the zillah court, or of the provincial court of appeal, before the Sudder Dewanny Adawlut, with having been guilty of corruption in opposition to his oath, the court shall receive the charge,.....If the charge shall be established, the Governor-General in Council will *either remove such Judge from his office or suspend him from the Honourable* Company's service, or pass *such other order as may appear proper.*

We are drawing particular attention to this provision because of the use of the word 'remove'. Then we have Regulation 8 of 1806. The preamble to this Regulation, after referring to the earlier enactments by which Collectors of revenue, commercial residents, or agents, salt agents, collectors of the customs or other duties, the mint and assay masters and their respective assistants, "are declared amenable to the zillah or city court of Dewanny Adawlut in the jurisdiction of which they may reside, or carry on the public business committed to their charge, for any acts done in their official capacity, in opposition to any regulation", and after reciting various parliamentary enactments which dealt with the prosecution of persons employed in the Company's

service who were guilty of breach of trust or embezzlement of public moneys etc., recited that this was in order that the Government may be enabled to judge whether *such officer deserved any longer to be continued in the employment of the Company* and that in cases which may appear to require it the provisions of the law may be carried into effect by a public prosecution in the Supreme Court of Judicature,.... The following rules are accordingly enacted: "By s. 2 of this Regulation European public officers amenable to the zillah or city court may be proceeded against under s. 4 and s. 4 enacted :

> "Whenever a complaint, or charge of corruption.... or a charge of embezzlement of public money, or stores, or of any gross fraud upon the Company or breach of public trust, or other high misdemeanor, such as may appear to come within the provisions of the statutes quoted in the preamble to this regulation, or may be indictable as a misdemeanor in the Supreme Court of Judicature under any other statute in force, or though not so indictable may amount to a gross breach of duty or trust, such as, if established, *would subject the party to dismission* from office ; shall be preferred against any of the officers mentioned in Section 2, of this regulation, in any zillah, city, or provincial court authorized by the regulations to receive the same ; or before the court of Sudder Dewanny Adawlut ; the judge, or judges, of the court receiving such complaint or charge, shall transmit a copy and English translation of the petition of plaint or charge, for the information and orders of the Governor General in Council".

Sections 5 to 17 enacted procedural provisions of the same type as we have in ss. 3 to 22 of the Act and s. 17 of the Regulation reads:

> "The Governor General in Council, on consideration of the report and proceedings submitted to him in persuance of the foregoing section, will pass such final orders as may appear to him just and proper and in the event of his deeming it necessary that the party accused should be brought to trial, by a public prosecution, in the Supreme Court of Judicature, will issue the necessary instructions for that purpose to the law officers of Government".

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From this it would be clear that 'the final order as may appear to him to be just and proper' would include the dismissal which is referred to in s. 4. Reference may also be made to s. 19 of this Regulation which contains a saving in the same form as we have in s. 25 of the Act, for that reads:

> "Nothing in the persent regulation shall be construed to preclude the Governor General in Council from ordering a public prosecution, in the Supreme Court of Judicature, whenever it may appear to him expedient, without making the special inquiry herein provided for. Nor will any resolution or order, which the Governor General in Council may pass under this regulation prevent individuals from having recourse, at all times, to the supreme court, in the mode prescribed by law."

By s. 5 of Regulation 10 of 1806 the then existing provisions applicable to Judges etc. under the Regulations of 1793, Regulation 4 of 1803 and Regulation 8 of 1806 were made applicable to charges of the same nature against any covenanted servant of the Company employed in the judicial department. Finally, we have Regulation 26 of 1839 which repealed portions of the ealier Regulations and consolidated the law with reference to the mode of inquiry, particularly those portions of the Regulations which required security to be furnished by those persons who preferred charges against the officers. Section 2 of this Regulation 26 of 1839 which corresponds to s. 2 of the Act ran:

> "If the Court of Sadar Dewani and Nizamut Adawlut, either of the Sudder Boards of Revenue, or the Board of Customs, Salt and Opium, shall be of opinion that substantial grounds exist for making a regular and formal inquiry into the truth of any imputation of Official misconduct affecting any officer.... *not removable without the sanction of* Government, they shall submit the documents on which their opinion may be founded, together with a statement of the charges reduced to distinct articles which they may propose to be made the subject of a regular investigation, to the Governor of Bengal....."

In other words, where the officer could be removed by the courts and authorities mentioned in the earlier part of the section they could themselves take action but in the case of

an officer who could not be removed except by Government a reference was necessary to be made to the Government. Section 9 enacted that if the Governor agreed with the Board or authority making the reference that there was a *prima facie* case for inquiry, he shall appoint a commissioner and s. 20 provided that the Governor will "pass such decision as he deems most just" and "if he deems it proper may order the accused to be brought to trial" and there is a saving of the same type as we have in s. 25 contained in s. 21 of the Regulation.

The same language as we have just extracted from s. 2 of the Bengal Regulation 26 of 1839 is to be found in Act 13 of 1843 which was in force in the Presidency of Madras. That section ran :

> "2. In case of imputation of official misconduct of an officer subject to Sudr and Fouidaree Adawlut or Board of Revenue, and not removable wihout sanction of Government, such Courts or Board may submit documents, & c., and charges, to the Governor in Council for his consideration".,

and s. 20 which deals with the power of the Governor in Council is in the same terms as s. 19 of the Act applicable to Bengal which we have extracted.

This examination leads us irresistably to the conclusion that the word "remove" was used in the legislation preceding the Act of 1850, as synonymous with "termination of service", though a variety of phraseology was employed to denote the same idea:—"declare the offender incapable of serving Government" (s. 11 of Bengal Regulation 13 of 1793), "remove" (Bengal Regulation 8 of 1803); "Judge whether such officer deserved any longer to be continued in the employment of the Company" and "subject the party to dismissal from office" (Bengal Regulation 8 of 1806) and "not removable without sanction of Government" (Regulation 26 of 1839).

Before concluding this examination of the language employed in the earlier enactments in *pari materia* with the Act of 1850 and throwing light on the meaning of the word 'removable' used in s. 2 of the Act, it would be pertinent to refer to certain parliamentary enactments of the period which also throw some light on the problem. In the Charter Act of 1833 (3 and 4 Will. IV, Ch. 85) which

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regulated the status and powers etc. of the East India Company and the Government of India by that body s. 74 enacted:

> "And be it enacted, that it shall be lawful for His Majesty, by any Writing under his Sign Manual, Countersigned by the President of the said Board of Commissioners, *to remove or dismiss any person* holding any office, Employment or Commission, Civil or Military, under the said Company in India...."

and again in s. 75:

> "....But that the said Court (Court of Directors) shall and may at all times have full Liberty *to remove or dismiss* any of such officers or servants at their will and pleasure; provided that any Servant of the said Company appointed by His Majesty .. shall not *be dismissed or removed without* His Majesty's approbation, as hereinbefore is mentioned."

This antecedent history makes two things clear; (1) that in them the word 'remove' is used in the sense of termination of employment or dismissal from the service of the Company, and (2) that it was a condition of the Governor's power to initiate the inquiry that he should have the power to effect the "removal" in that sense *i.e.* the dismissal of the officer. It need hardly be mentioned that since these enactments XXVI of 1839, XIII of 1843 and VI of 1838, were local—each applicable only to a single Presidency—there was no necessity to have a definition of 'Government' such as became necessary when these laws were consolidated under the Act of 1850.

This exhausts the legislative provisions antecedent to the Act of 1850 and which throw light on the phraseology employed in it. Before leaving this aspect of the case, it might be useful to refer to some enactments which were passed closely after the Act. A few years after the Act now under consideration was passed the Government of India Act, 1858 (21 and 22 Vict., Ch. 106) was enacted. Section 30 of that Act dealt with the patronage in respect of appointments etc. in India and referring to the powers of the Secretary of State in Council, went on to provide that "he shall have the like power to make regulations for the division and distribution of patronage and power of

nomination among the several authorities in India, and the like power of restoring to their stations, offices, or employments, officers and servants suspended or *removed* by any authority in India, as might have been exercised by the Court of Directors etc....." We refrain from referring to later Parliamentary enactments for the reason that they were passed at a time when under the Service Rules the word 'removal' was used and that expression attained a clear technical meaning as a termination of employment falling short of dismissal, in that certain penal consequences barring re-employment in Government service did not follow.

While on this topic, as regards the meaning that word bore in the Act as originally enacted we consider it would be pertinent to refer to a cognate provision occurring in s. 466 of the Criminal Procedure Code of 1872. The words of that section which was the forerunner of s. 197 of the present Code of Criminal Procedure, 1898 ran :

> "A complaint of an offence committed by a public servant in his capacity as such public servant, of which ..... any public servant not *removable* from his office without the sanction of the Government is accused as such ..... public servant, shall not be entertained against such ..... public servant, except with the sanction or under the direction of the Local Government, or of some officer empowered by the Local Government....."

The decisions on the construction of the word 'remove' in s. 466 and its successor s. 197 of the Code of 1898 are uniform and we consider it would be sufficient to refer to a very early decision of West and Pinhey, JJ. of the Bombay High Court reported in *Imperatrix* v. *Bhagwan Devraj*(1). A police patel was prosecuted for an offence committed by him in his official capacity. It was his contention that he was not "removable" without the sanction of Government and this contention having been accepted the Sessions Judge annulled the conviction and sentence. The argument of the learned pleader who appeared for the Crown who filed the appeal is thus set out in the report :—

> "Sanction is necessary only in the case of public servant

(1) I.L.R. 4 Bom. 357.

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who is not removable from his office without the sanction of the Government. A police patel is not such a person; he can be dismissed by a Magistrate (First class), subject to the sanction of the Police Commissioner."

and as to this the court said :

"It appears that a patel may be dismissed, on proof of misconduct, by a Magistrate (First class), subject to the sanction of the Police Commissioner. Section 466 of the Code of Criminal Procedure, therefore, does not apply to the case....."

In passing it may be pointed out that Harries, C. J. understood s. 197 of the Code of 1898 in the same way in a decision reported as *Angelo* v. *Kandan Manibi*(1). At page 225 of the report the learned Chief Justice equated the word 'removal' with the word 'dismissal' as would be seen from the following passage :

"I have already stated that Capt. Angelo is undoubtedly a public servant, and, in my view, is a servant who is not removable from his office save with the sanction of the Local Government. In my view, as his appointment could only be made with the sanction of the Provincial Government, his dismissal also would require such sanction".

We are not referring to other cases on the meaning of the expression 'remove' in s. 197 of the Criminal Procedure Code 1898 for the reason that these decisions are uniform and 'removal' is equated with the termination of employment *i.e.,* practically with dismissal and has never been understood as meaning a reduction in rank or a transfer from one post to a lower post by way of punishment.

The position, therefore, would be that if the Act of 1850 continued in the same form, the point, in our opinion, would be unarguable that 'removal' meant anything else than removal as understood in the Service Rules as a punishment.

The Act however underwent some amendments in 1897 by Act I of 1897 and we shall now proceed to consider the effect of these amendments. Before however setting out these amendments, it is necessary to point out that by 1897 as contrasted with the state of things in 1850 the

(1) 41 Criminal Law Journal 221.

British Crown had assumed to itself all the powers which before then vested in the East India Company and since the Act of 1850 had, in its preamble and in s. 2, used the words "Service of the Company" amendments had to be made in order to fit the words of the statute into the new situation. We shall now proceed to consider each one of the several amendments which were introduced by the Act of 1897 and examine whether they have really made any change material for the present purpose. The preamble as amended ran, to quote only the relevant words :

> "For regulating inquiries into the behaviour of Public Servants not removable from their appointment without the sanction of Government and to make the same uniform throughout the territories under the Government of India, it is enacted as follows :"

Now for the words "not removable without the sanction of Government" were substituted the words "not removable from their appointment without the sanction of Government". It was suggested by learned counsel for the respondent that this made a significant change and that there was a marked difference introduced by the addition of the words "from their appointment" into the preamble. But to this difference we shall advert later because there is another such change made in s. 2 and the two might be considered together. Section 2 as amended ran :

> "Whenever the Government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour by any person in the service of Government not removable from his appointment without the sanction of the Government, it shall cause the substance of the imputations to be drawn into distinct Articles of Charge, and shall order a formal public inquiry to be made into the truth thereof."

Along with this the amendment effected in s. 23 has to be taken into account and the section, as amended, read :

> "The powers of the Government under this Act may in all cases be exercised by the Governor-General in Council, and when the person accused can be removed from his appointment by the Local Government, those

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powers may also be exercised by the Local Government".

The two points arising for consideration on the changes in the preamble and these sections would be: (1) whether there is any difference between the content or meaning of the words "an officer not removable without the sanction of Government" and the words "not removable from his appointment without the sanction of Government" in s. 23; (2) whether there is any difference between "removable from his office" used in s. 2 as it was enacted in 1850 and "removable from his appointment without the sanction of Government" brought in by the amending Act of 1897. These two may be considered together. Let us first take the Act before it was amended—the relevant words used in it were first in the preamble "public servants not removable without the sanction of Government" and in Section 2 "person in the service of the East India Company not removable from his office without the sanction of the same Government" and in s. 23 "Government whose sanction is necessary for the removal of the person accused". It is obvious that the "removal" in the three places has reference to removal 'from office' and though the word 'office' was not used either in the preamble or in s. 23, in the context the omission is immaterial. Taking next the Act after the amendment, the relevant phraseology in the three places was "not removable from their appointment without the sanction of Government" (preamble), "not removable from his appointment without the sanction of the Government" (s. 2) and the same but in a positive form "when the person accused can be removed from his appointment by the Local Government" in s. 23. The material variation brought in by the amendment was the substitution of the word "from his office" by the word "from his appointment". The question is whether there is any difference between removal of a person from "his appointment" and the removal from the office which such person holds, the meaning of the word "removable" remaining the same. There could be no serious controversy that though the Service Rules might make distinctions between appointments to a Service and appointments to a post, the expression 'office which a person holds'

is the same as that to which he is appointed. If a person is appointed to an office there can be no distinction between a removal from his appointment and a removal from his office, for they both signify the identical idea. We consider the conclusion inescapable that the Act of 1897 really effected no relevant change in the law as it originally stood in 1850, except that by dropping the words 'East India Company' and "the Company's Servants" it brought it into line with the nomenclature of the Government after the Government of India Acts of 1858 and 1861. Of course, there was some little change effected by reason of the amendment to s. 23 as to the Governments which could initiate these proceedings by conferring a superior power on the Governor-General, but this is irrelevant for our present purposes.

The next amendment effected to the Act was by the adaptation order issued in 1937 under the Government of India Act, 1935 to bring the provision of the Act into line with the constitutional changes effected by that Parliamentary statute. Before proceeding to deal with it, however, it is necessary briefly to advert to the arguments strenuously pressed before us by Mr. Setalvad that the amendments effected by the Act of 1897 were intended to bring about a change in the law. His submission was this : A Bill No. 20 of 1896 was introduced into the Council of the Governor-General of India on September 20, 1896 to amend Act 37 of 1850. As originally drafted and as published in the Gazette, there was no material change effected in the preamble except the dropping of the word 'East India Company' and its substitution by the word 'India'. In s. 2 the original Bill proposed for the words 'any person in the service of the East India Company not removable from his office without the sanction of the same Government' the word 'Government'. If that amendment stood the words material to the context would have read :

> "Imputation of misbehaviour by any person in the service of Government....."

and for s. 23 the words originally proposed were "the powers of Government under this Act may in all cases be exercised by the Governor-General in Council and when the person accused can be removed by a Local Govern-

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ment those powers may also be exercised by the Local Government." In the statement of objects and reasons the purpose of the amendment by the Bill was stated to be to clarify the language which was obscure and bring it "in accord with the present state of facts" and to remove doubts which might arise on the construction of s. 23 and to declare the authority by whom the powers of Government may be exercised. In this connection it is necessary to advert that by the date of the Bill there was no such official as the Deputy Governor of the Presidency of Fort William, or Lt. Governor of the North-Western Provinces, and consequently the Act as it then stood referred to a state of affairs which had ceased to be relevant. Mr. Setalvad then drew our attention to the fact that the Government of Madras had objected to the amendment in that form on the ground that the amendment as proposed would interfere with the powers which that Government was exercising over certain officers and in particular I.C.S. officers serving under that Government and that for that reason and in order to satisfy the apprehensions of the Madras Government as to the effect of the amendments as originally proposed the words "removable from his appointment" were used in the places where they are now found. Learned counsel also invited us to the report of the Select Committee in which there is a reference to these representations of the Government of Madras. From these facts learned counsel invited us to hold that the substitution of the words "from his appointment" for the words "from his office" were intended to enable the Local Government to exercise jurisdiction under the Act against officers of the type of the appellant before us.

We consider, however, that this is not material which could legitimately be taken into account to construe the provision where, as we have stated earlier, they are absolutely clear.

In *Herron* v. *Rathmines*(1), Lord Halsbury, L.C. said :

"I very heartily concur with the language of Fitzgibbon, L.J., that 'we cannot interpret the Act by any reference to the Bill, nor can we determine its construc-

(1) [1892] A.C. 498, 502.

tion by any reference to its original form' ".

To a similar effect is an observation of Lord Wright who said in *Assam Railways and Trading Co. Ltd* v. *Inland Revenue Commissioners*(1) :

> "It is clear that the language of a Minister of the Crown in proposing in Parliament a measure which eventually becomes law is inadmissible and the report of commissioners is even more removed from value as evidence of intention, because it does not follow that their recommendations were accepted."

Willes, J. said in *Millar* v. *Taylor* (2) :

> "The sense and meaning of an Act of Parliament must be collected from what it says when passed into a law, and not from the history of changes it underwent in the House where it took its rise."

The alterations made in the Bill during its passage through Committee are :

> "wisely inadmissible to explain it."

(*R.* v. *Hertford College*) (3) :

It would not be correct to say that every change in the phraseology introduced by way of amendment necessarily implies exchange in the content of the provision or in its meaning, for it entirely depends upon whether these words are merely meant to clarify or to alter the then existing meaning. Now, take for instance the use of the expression "Governor whose sanction is necessary for the removal of the person accused" used in s. 23 as enacted in 1850. "Removal" is ambiguous for it might refer (a) to removal from appointment, or (b) to physical removal of the person. It is obvious that it cannot be the latter. Therefore the additional words 'removal from his appointment' merely clarify what the word 'removal' already meant and do not alter its meaning. Nor can it be said that there was a distinction drawn between the words 'office' and 'appointment' and that the substitution of the word 'appointment' for the word 'office' in s. 2 introduced a vital difference in the meaning of the word 'remove' which occurs not only in s. 2 but in the preamble, in s. 23 as also in s. 25 which remains till today in the form in which it

(1) [1935] A.C. 445, 458 (2) (1769) 4 Burr. 2303, 2332
(3) [1878] 3 Q.B.D. 693, 707.

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was when originally enacted. Section 25 runs :

> "25. Nothing in this Act shall be construed to effect the authority of Government, for suspending or removing any public servant for any cause without any inquiry under this Act."

It cannot be that 'removal' meant a power to reduce an officer in his rank in ss. 2 and 23 but by the same word used in s. 25 is meant removal from service *i.e.,* termination of employment. We are saying this because there was no alteration or amendment effected to s. 25 in which the word 'remove' continues to express the same idea of termination of employment as it did under the Act as originally enacted, and as it is conceded, it does even now. The meaning of the words being clear, this extraneous aid to interpretation in the form of the report of the Select Committee is, even if in any particular exceptional case legitimate, wholly irrelevant in the case before us.

It was next submitted that as the Government of Madras had in their communication to the Government of India pointed out that that Government had been utilising the provisions of the enactment and their powers under s. 2 even in the case of I.C.S. officers who could not be removed by the Governments in India, we should consider this as a "contemporaneous exposition" or an "executive interpretation" of the statute and therefore of some guide to the interpretation of its provisions. We consider that this argument is without substance. In the first place, it is clear even on the material placed before us by the learned counsel that it was the Government of Madras alone that had brought to the notice of the Government of India that the power of the Local Government to institute inquiries against I.C.S. officers would be affected, if the amendments as proposed in the original Bill whose terms we have set out, were put through. It would, therefore, appear as if no other Local Government in India had ever sought to do so but they proceeded on the construction that it was not within their power to institute inquiry against such officers. In other words, every Local Government in India other than the Madras Government proceeded on the view that 'removal'

meant removal under the Service Rules *viz.,* termination of employment, and as the Local Government had no such power over officers recruited by the Secretary of State it was not capable of exercising that power. If therefore contemporary exposition were any guide, the conclusion should be contrary to that suggested by learned counsel for the respondent. Besides, even the Government of Madras in the communication to the Government of India to which our attention was drawn, referred only to one instance and we do not consider that this isolated instance furnishes any basis on which to rest an argument about "contemporania expositio". Lastly contemporaneous exposition has value only when such views or actions could be tested in Courts and there has been a general acquiescence in the course adopted or the action taken by the executive authority. It is obvious that there is no basis for such an argument in the present case. The position, therefore, is that we have to construe the section as it stands after the amendment by comparing it with what it was before and so considered it is clear that the changes made are inconsequential and were merely meant to clarify and bring the provisions into line with the circumstances then existing and were not meant to effect any radical change in the position of Government servants and the powers of Local Governments over them.

Before parting with the submission regarding the evidentiary value of the objections raised by the Madras Government to the amendments originally proposed to the Act, it is necessary to advert to one matter. It would be seen that it was the view of the Madras Government that on the Act, as it originally stood, it had power to direct enquiries against I.C.S. Officers serving in that Presidency and if that were right really nothing turns on the effect of the amendment. We did not, however, understand learned counsel for the respondent to suggest that on the words of the Act, as originally enacted, the words "removal of the accused person" and "removal from office" could mean anything other than removal by termination of employment. The argument based on the executive interpretation of the amending section must, for this additional reason, be rejected.

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From another aspect the problem could be stated to be whether by reason of the changes effected in 1897 the content of the expression 'removable' underwent any alteration or became from bearing the meaning of "terminable from employment" to "reduction in rank". It would be seen from the foregoing that on any proper construction of the Act as it emerged after the amendments of 1897 it is not possible to read any such alteration.

Something was said to us about the legitimacy of a reference to the state of the law before and the evil which a legislation was intended to overcome as legitimate guides to the interpretation of statutes, but such an enquiry is wholly inapposite to the present case, because the contention which is urged by learned counsel for the respondent is not that a change was made in the law in order to overcome a difficulty but that the intention was to continue the law as it was always understood to be. If this were the correct position, the change in the phraseology made no difference. If so, we have to examine the earlier law and this shows that it is inconsistent with the construction for which the respondent contends.

We now come to amendment effected to s. 23 by the Adaptation Order under the Government of India Act, 1935. As amended, the section read :

> "In this Act the 'Government' means the Central Government in the case of persons employed under that Government and the Provincial Government in the case of persons employed under that Government."

Pausing here, it is necessary to emphasise that the "adaptation" was made under the powers conferred by s. 293 of the Government of India Act, 1935 which empowered His Majesty by Order in Council to provide that any law in force in British India "shall have effect subject to such adaptations and modifications as appear to be necessary or expedient *for bringing the provisions of that law into accord with provisions of this Act*" and in particular "*into accord with the provisions thereof which reconstitute under different names Governments and authorities in India and prescribe the distribution of legislative and executive powers between the Federation and the Provinces*". Why we are drawing attention to this is that the manifest intention of the Adaptation was not

to alter the law but merely to bring it into line with the circumstances and nomenclature that were brought in by the constitutional changes effected by the Government of India Act, 1935.

In this context it is necessary to advert to certain of the provisions of the Government of India Act, 1935 because they throw light on the amendments actually carried out in s. 23 of the Act which we have just set out. It will be recollected that s. 96(B) of the Government of India Act, 1915 as amended in 1919 contained a constitutional guarantee that "no person shall be dismissed by an authority subordinate to that by which he was appointed" which in the case of a person appointed by the Secretary of State immunised him from dismissal by any authority in India. This provision in the Government of India Act, 1919 was repeated in s. 240(2) of the Government of India Act, 1935 which read :

> "No such person as aforesaid (a member of the Civil Service of the Crown in India) shall be dismissed from service by any authority subordinate to that by which he was appointed."

The meaning of the word "dismissal' here being defined by s. 277 thus "references to dismissal from His Majesty's Service include references to removal from His Majesty's service". Neither the Governor-General nor the Governor had any authority to remove persons appointed by the Secretary of State from their appointment. Section 241 enacted that "appointments to the Civil Service and Civil posts under the Crown in India shall, after the commencement of Part III of this Act (April 1, 1937) be made in the case of servants of the Federation and posts in connection with the affairs of the Federation by the Governor-General and in the case of services or posts in connection with the affairs of the Provinces by the Governor," and sub-section (2) enabled the Governor-General to make rules in the case of persons serving in connection with the affairs of the Federation and the Governor in the case of persons serving in connection with the affairs of the Province. There were provisos to these provisions contained in sub-section (3) which are not very relevant for our present purpose. In this context reference may be made to s. 270 which contains the

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pattern of the distribution of officers between the Centre and the Provinces and the phraseology which we find employed in the amended s. 23 of the Act.

> S. 270(1) *Indemnity for past acts.*—"No proceedings civil or criminal shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date, except with the consent, in the case of a person who was employed in connection with the affairs of the Government of India or the affairs of Burma, of the Governor-General in his discretion and in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province in his discretion."

The reason why we are drawing attention to these provisions is that when quasi-federalism was introduced into the Indian Constitution by the Government of India Act, 1935 a distinction was drawn between persons in the Civil Service of the Crown who were employed in connection with the affairs of the Federation and those who were employed in the Provinces in connection with the affairs of the Provinces and it is just this that is reflected in the amendments to s. 23 and shows that this was merely designed to bring that section into line with the constitutional provisions just referred to.

We shall now take up for consideration the effect of the change introduced in s. 23 on the identity of the Government which could take action under s. 2. To digress a little, before the amendment effected by the Adaptation Order of 1937 which brought in the idea of "employment under Government" (compare the terms of s. 270 of the Government of India Act, 1935 already referred to) as distinguished from "officers removable from their appointments by that Government" the conditions for determining the identity of the Government which could take action under s. 2 were really two: (1) that the officer must be "removable" from his appointment by the Government which initiated the inquiry, and (2) such a Government must be satisfied that it was necessary to embark upon this inquiry. And this, notwithstanding the word "The Government" occurring thrice in s. 2 as

it does now. The competency of the Government to remove the officer was the condition stipulated for identifying the Government under s. 23. After the amendment of 1937, though the condition in s. 2 of the Act that it was that Government alone that could initiate any enquiry which had authority to 'remove' the officer was retained, because s. 2 stood unchanged, a different concept was introduced in s. 23 that the Government must be that one—Provincial or Central—under whom the officer was employed. When therefore this definition was read into the operative provision in s. 2, it meant that instead of there being two conditions to be satisfied before the enquiry could be initiated, three conditions had to be satisfied, because servants in the employ of a Government were not necessarily 'removable' by that Government owing to the guarantees regarding service conditions contained in the Constitution. It is this circumstance that has been responsible for the difficulty created by the definition in s. 23 as amended on the interpretation of s. 2 of the Act. As, however, s. 23 constitutes the definition of the expression "the Government" wherever it occurs in the Act, it would follow that the terms of s. 23 have to be read in each of the three places where the word "the Government" occurs in s. 2. The decision of this Court in *Kapur Singh* v. *The Union of India*(1) has decided that an officer of the Indian Civil Services who has been allotted to a State and appointed to a post in that State is in "the employ of that State" for the purposes of s. 23. Therefore, "the Government" when it occurs first in s. 2 would mean, having regard to the definition, only the State of the Punjab in which the appellant before us is employed. The Punjab Government would again be "the Government" in the 2nd condition *viz.*, 'misbehaviour by a person *in the service of the Government*' where "the Government" occurs for the second time. We have next the words "not removable from his appointment without the sanction of *the Government*". The only meaning which could reasonably be attributed to these words would be, if we are right in our interpretation of the word 'removable' which we have discussed earlier, that it is that Govern-

(1) [1960] 2 S.C.R. 569.

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ment which is competent to terminate his employment. It is common ground that the State of Punjab is not the Government which is capable of removing the appellant from his appointment. In the circumstances the question arises whether definition in s. 23 of the words "the Government" can assist the respondent in contending that since the appellant is "employed under that State" the last condition is also satisfied. We are clearly of the opinion that it is not possible to accept such a construction. The condition that the officer against whom proceedings are taken must be one who is amenable to the disciplinary control of the Government which initiates the inquiry and is competent to inflict upon him the punishment of removal has been the basic ratio and purpose of the Act of 1850 ever since it was enacted. The change effected by the amendment brought in 1897 retained this characteristic, though it gave an overriding power to the Governor-General to initiate proceedings in all cases whether or not the officer was serving a Local Government or the Central Government. It could not, therefore, be that by reason of an adaptation which was effected in order to bring the Act into line with the Constitution—the Government of India Act, 1935—a vital change was made which upset this basic feature and conferred a power upon a Provincial Government to institute an inquiry even when such a Government had not the power to punish him by way of removal. In this connection it is not without significance that the words in the preamble of the Act "To enact a law for regulating inquiries into the behaviour of public servants not removable from their appointments without the sanction of Government" were left untouched *i.e.*, without the addition of the definite article "the" before "Government" when it occurs here. Hence the definition of "the Government" in s. 23 of the Act as it now stands would not in terms apply to that word in the preamble. The result would be that the word 'Government' as used in the preamble would continue to retain the same meaning as it had when the Act was originally enacted in 1850 when the word which s. 23 defined was 'Government' and not 'the Government' as it has done since 1897. In 1850 it meant read with the then definition, "removable by the Governor-General

or the Governor, Lt. Governor etc." "whose sanction. was necessary for the removal of the accused officer". Translated in terms of post-Constitution phraseology it would mean "who is not removable from his appointment save with the sanction of the Union Government or the State Government, as the case may be". If therefore the preamble, and the operative provisions have to be reasonably and harmoniously construed, one must posit as a condition for the availability of the power to institute the enquiry under s. 2, that the officer must be one over whom the Government that initiates the proceedings has disciplinary powers extending to his removal from service. It was suggested that there was an anomaly which would be avoided if the construction pressed on us on behalf of the respondent were accepted. It was pointed out that in the case of officers of the All India Services, including the Indian Civil Service, where they were employed in the State and not under the Central Government, if the word 'Government' were given the interpretation which we consider is the right one, viz., the Government having the power to order his removal from service, neither the State Government nor the Union Government would have the authority to exercise power under s. 2; for the power of the State Government would be restricted to officers of the Provincial Services and similarly the power of the Central Government could be exercised in the case of officers of the All India Services only if they were employed under the Union Government. The submission was that this anomaly, could be eliminated if we understood the word 'removable' as signifying a mere reduction in rank as distinguished from removal in the sense of termination of employment. What we have said earlier would suffice to show that historically and as a matter of mere interpretation of the words used in the relevant sections the word "removable" is used in the same sense in which it is used in connection with the service rules as a punishment involving the termination of appointment. If that word cannot therefore but be given that significance, the anomaly cannot be avoided by reading the definition of the expression 'the Government' in s. 23 into the words 'the Government' when they occur for the third time in s. 2.

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That would be not only incongruous but would not make sense, for where the employing Government does not have the power of terminating the service of the officer to read 'the Government' there as meaning the employing Government would lead to a *reductio ad absurdum.* Nor is it possible to omit from all consideration the words "not removable from his appointment without the sanction of the Government" which would practically be the result of that construction, for that would be to rob the clause of its entire content, for it was the power to remove that was the criterion for the determination of the Government which had power to order the inquiry from 1850 right up to 1937. The mere fact, therefore, that in the case of a particular type of officers there is no power in either the Union Government or in the State Government to order an inquiry is no argument for adopting a forced, and we will even add an impossible, construction of the section. Nor would the construction which we have placed upon the terms of s. 2 lead to any practical inconvenience, even assuming that that would be a relevant consideration when a court has to construe a statute. It is admitted that there is practically a parallel provision for conducting an inquiry into the misconduct of an officer under the All India Services (Discipline & Appeal) Rules, 1955—a proceeding which could be initiated by the State Government where the officer were in the employ of the State Government. Nor is this the only remedy because an officer in the All India Services could be called over to the Union Government and then proceedings even under this Act could be launched against him, and we would add there is precedent for this. Practical inconvenience there is none and in the circumstances we consider that the supposed anomaly which is brought in by reason of a definition in s. 23 which does not entirely fit into the provisions of s. 2 of the Act, is no ground at all for adopting a forced construction of s. 2 by reading the word 'removal' in an unusual, if not an unnatural, sense. In this connection we might point out that we put a question to Mr. Setalvad whether there was any Service Rule from 1850 or thereabouts right up to date in which the words 'removal of an officer from his appointment' have been used in the

sense of "a reduction in rank" as distinguished from the termination of his employment and he fairly conceded that he could not point to any. We would, therefore, answer the reference by saying that the word 'removable' in the reference means removable from his appointment in the sense of terminating his appointment and signifies the penalty numbered 6 in Rule 3 of All India Services (Discipline & Appeal) Rules, 1955 where the expression is expanded to mean 'removal from the service which shall not disqualify for future employment'. The reference is answered accordingly.

THE BUCKINGHAM AND CARNATIC CO. LTD.

v.

VENKATIAH AND ANR.

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August 2

(P. B. GAJENDRAGADKAR, K. N. WANCHOO AND K. C. DAS GUPTA, JJ.)

Industrial Dispute—Standing Orders—Termination of Service—Employee absent without leave—"Employer not to dismiss or punish employee during period of sickness"—Scope and effect of—Employees' State Insurance Act, 1948 (34 *of* 1948), *s.* 73, *sub-ss.* (1) *and* (2) *and s.* 85(*d*)—*Standing Orders No.* 8 (*ii*) *and* 13(*f*)—*Regulations* 53 *to* 86.

The respondent Venkatiah went on leave for six days and did not join duty on the expiry of the leave period but remained absent without sending to the appellant any communication for extending his leave. Later, he sent a letter to the appellant accompanied by a medical certificate issued by a Civil Assistant Surgeon in respect of his illness for a period of nearly two months. The Medical Officer of the appellant was unable to confirm that he was ailing for a period of two months. Finding the explanation for his absence unsatisfactory the appellant refused to take him back in its employment. Meanwhile he had applied to the Regional Director of the Employees' State Insurance Corporation and obtained cash sickness benefit for the period covered by the Medical Certificate issued by the Civil Assistant Surgeon. On the appellant's refusal to take him back in its employment, the respondent union, referred his case for adjudication