S. PRATAP SINGH

v.

THE STATE OF PUNJAB

1963

September 2

(S. K. DAS, K. SUBBA RAO, RAGHUBAR DAYAL, N. RAJAGOPALA AYYANGAR AND J. R. MUDHOLKAR, JJ.)

Punjab Civil Services (Punishment and Appeal) Rules, 1952, *rr.* 3, 26(*d*), 8, 15—*Grant of leave—Power to revoke—Date of leave preparatory to retirement—If date of retirement—Communication of revocation after retirement—When effective—Right to retire—Restriction on—Constitution of India,* 1950, *Arts.* 19 *and* 23—*Validity of r.* 326(*d*).

Tape Record of Conversations—If legal evidence—Weight of.

Government—Order of revocation of leave and suspension of Civil Servant—Power exercised mala fide *and on extraneous considerations—High Court—Jurisdiction to interfere under Art.* 226 *of the Constitution.*

The appellant was a civil surgeon in the employment of the State of Punjab having joined the Punjab Civil Medical Service in 1947. In 1956 he was posted to Jullunder where he remained till he proceeded on leave preparatory to retirement sometime in December 1960. His leave was sanctioned on December 18, 1960, and was notified in the Punjab Gazette dated January 27, 1961. On June 3, 1961, the Governor of Punjab passed orders suspending the appellant with immediate effect and revoking his leave as the Government had decided that a departmental enquiry be instituted against him under s. 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952. The Governor further passed an order under r. 3.26(d) by which "A government servant under suspension on a charge of misconduct shall not be ..... permitted to retire on his reaching the date of compulsory retirement but should be retained in service until the enquiry into the charge is concluded and a final order is passed thereon." The order under r. 3.26(d) was that in view of the appellant's reaching the age of superannuation on June 16, 1961, he should be retained in service beyond that date till the completion of the departmental enquiry. These orders reached the appellant, according to him, only on June 19, 1961, but they were published in the Punjab Government Gazette Extraordinary dated June 10, 1961. By a writ petition filed under Art. 226 of the Constitution of India before the High Court of Punjab, the appellant challenged the legality of the orders of suspension, revocation of leave, retention in service after the date of superannuation and institution of the departmental enquiry, on the grounds *inter alia,* (1) that the rules governing his service did not empower the Governor to pass the impugned orders, and (2) that the impugned orders were passed *mala fide* by or at the instance

1963

S. Pratap Singh v. *The State of Punjab*

of the Chief Minister, who was in-charge of the department of Health and who was personally hostile to him by reason of certain incidents, and that the orders were promoted by the desire on the part of the Chief Minister to wreak personally his vengeance on the appellant.

HELD : (i) Under r. 8.15 of the Punjab Civil Services (Punishment and Appeal) Rules there is no restriction on the power of revocation of leave with respect to the time when it is to be exercised, and the authority empowered to grant leave has the discretion to revoke it even after the officer to whom leave had been sanctioned had proceeded on leave.

(ii) The date from which a Government servant is on leave preparatory to retirement cannot be treated as the date of his retirement from service, and an order of suspension of the Government servant during such leave is valid.

(iii) Though the orders of suspension and revocation dated June 3, 1961, were actually communicated to the appellant only after the date of his retirement, since he was on leave the said orders were effective from the moment they were issued.

Bachhittar Singh v. *State of Punjab,* A.I.R. 1963 S.C. 395 and *State of Punjab* v. *Sodhi Sukhdev Singh,* [1961] 2 S.C.R. 371, distinguished.

(iv) The appellant had no absolute right to opt for retirement on his attaining the age of superannuation, that any such option was subject to r. 3.26(d) which applied to him and that his case came under that rule as he was on the date of his compulsory retirement under suspension on charges of misconduct.

(v) Whenever any charge of misconduct is under enquiry by the Government, be it informally or formally, the Government is competent to suspend the Government servant and, if the requirements of the case require, to take action under s. 3.26(d).

(vi) The provisions of r. 3.26(d) do not contravene Arts. 19 and 23 of the Constitution of India.

(vii) Rendering of the tape recorded conversation can be legal evidence by way of corroborating the statements of a person who deposes that the other speaker and he carried on that conversation or even of the statement of a person who may depose that he overheard the conversation between the two persons and what they actually stated had been tape recorded. Weight to be given to such evidence will depend on the other factors which may be established in a particular case.

Per Das, Subba Rao and Rajagopala Ayyangar, JJ.—(i) Where an authority exercising a power has taken into account as a relevant factor something which it could not properly take into account, the exercise of the power would be bad. Where the purposes sought to be achieved are mixed, some relevant and some alien to the purpose, the difficulty is resolved by finding the

dominant purpose which impelled the action, and where the power itself is conditioned by a purpose, the courts would invalidate the exercise of the power when an irrelevant purpose is proved to have entered the mind of the authority.

(ii) The Court is not an appellate forum where the correctness of an order of Government could be canvassed and it has no jurisdiction to substitute its own view as to the necessity or desirability of initiating disciplinary proceedings, for the entirety of the power, jurisdiction in that regard is vested in law in the Government. The only question which could be considered by the court is whether the authority vested with the power has paid attention to or taken into account circumstances, events or matters wholly extraneous to the purpose for which the power was vested, or whether the proceedings have been initiated *mala fide* for satisfying a private or personal grudge of the authority against the officer. If the act is in excess of the power granted or is an abuse or misuse of power, the matter is capable of interference and rectification by the Court.

(iii) It is not correct to say that *mala fides* in the sense of improper motive could be established only by direct evidence, that is, that it must be discernible from the order impugned or must be shown from the noting in the file which preceded that order. If bad faith would vitiate the order, the same can be deduced as a reasonable and inescapable inference from proved facts.

Municipal Council of Sydney v. *Cambell,* [1925] A.C. 338, *Short* v. *Poole Corporation,* [1926] 1 Ch. 66, *Vatcher* v. *Paull,* [1915] A.C. 372, *Sadler* v. *Shefield Corporation,* [1924] 1 Ch. 483, *Earl Fitzwilliam* v. *Minister of T. & C. Planning,* [1951] 2 K. B. 284 and *General Assembly of Free Church* v. *Overatoun,* [1904] A.C. 515, relied on.

Per Dayal and Mudholkar, JJ. (*dissenting*). On the facts, the dominant motive which induced the Government to take action against the appellant was not to take disciplinary proceedings against him for misconduct which it *bona fide* believed he had committed, but to wreak vengeance on him for incurring his wrath and for the discredit that he had brought on the Chief Minister; the impugned orders were vitiated by *mala fides,* in that they were motivated by an improper purpose which was outside that for which the power of discretion was conferred on Government; and the said orders revoking the leave granted and placing the appellant under suspension and directing an enquiry into the charges against him, should be set aside.

Quaere, whether the provision in Art. 310(1) of the Constitution of India that "members of a Civil Service of a State hold office during the pleasure of the Governor", conferred a power on the State Government to compel an officer to continue in service of the State against his will apart from service Rules which might govern the matter even after the age of superannuation was reached.

1963

S. Pratap Singh v. *The State of Punjab*

Ayyangar, J.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 80 of 1963.

Appeal from the judgment and order dated April 4, 1962, of the Punjab High Court in Civil Writ No. 961 of 1961.

The appellant appeared in person.

C. K. Daphtary, Attorney-General, Mohinder Singh Punnu, Deputy Advocate-General, Punjab and *B. R. G. K. Achar for P. D. Menon,* for the respondent.

September 2, 1963. The judgment of S. K. Das, K. Subba Rao and N. Rajagopala Ayyangar, JJ., was delivered by N. Rajagopala Ayyangar, JJ. The dissenting Opinion of Raghubar Dayal and J. R. Mudholkar, JJ., was delivered by Raghubar Dayal, J.

AYYANGAR, J.—This appeal is against a judgment of the High Court, Punjab, dismissing a petition filed by the appellant in that Court under Art. 226 of the Constitution and has been preferred pursuant to a certificate of fitness granted under Art. 133(1) (c).

The appellant was a Civil Surgeon in the employment of the State Government who had been granted leave preparatory to retirement, and subsequently, in June 1961, orders were passed by Government (1) revoking the leave he had originally been granted and recalling him to duty, (2) simultaneously placing him under suspension pending the result of an inquiry into certain charges of misconduct, and (3) ordering a departmental inquiry against him. The legality of these orders was challenged by the appellant in the petition that he filed in the High Court. The petition was dismissed by the learned Judges, but on application by the appellant, he was granted a certificate of fitness on the strength of which he has filed the present appeal.

The facts of the case leading up to the appeal before us are set out by our learned Brother Dayal, J. in his judgment fully and in great detail and so we have thought it unnecessary to cumber this judgment with them. Two points were urged before us by the appellant who argued the case in person and presented the facts and the law with commend-

able clarity and moderation. The first of them was that every one of the impugned orders of June 1961 (a) recalling him from the leave previously granted, (b) placing him under suspension pending an inquiry, and (c) starting an inquiry against him were illegal for the reason that such action on the part of Government was contrary to and not permitted by the relevant Service Rules applicable to him. The second ground of challenge was that these orders, assuming them to be within the power of Government on a proper interpretation of the rules were passed *mala fide,* by or at the instance of the Chief Minister, Punjab, who was personally hostile to him by reason of certain incidents and circumstances which he set out and that the impugned orders were prompted by the desire on the part of the Chief Minister to wreak personally his vengeance on the appellant.

The relevant rules on the topic as well as their interpretation have all been dealt in the judgment of Dayal, J., and we agree in the main with his conclusion that the orders impugned were not beyond the power of the Government. We should, however, add that we should not be taken to have accepted the interpretation which Dayal, J., has placed on each one of the several rules which he has considered. Besides, we should not be taken to have acceded to the submission of the learned Attorney-General who appeared for the respondent-State, that the provision in Art. 310(1) of the Constitution that "members of a Civil Service of a State hold office *during the pleasure of the Governor",* conferred a power on the State Government to compel an officer to continue in service of the State against his will apart from service rules which might govern the matter even after the age of superannuation was reached, or where he was employed for a defined term, even after the term of his appointment was over. We consider that to construe the expression "the pleasure of the Governor" in that manner would be patently unwarranted besides being contrary to what this Court said in *State of Bihar* v. *Abdul Majid*(1). In the view which we have taken on the second ground of challenge to the orders of Government we have not considered it necessary to examine in detail the several rules to which our attention was drawn or their proper interpretation.

We shall now proceed to deal with the second point

(1) [1954] S.C.R. 786 at p. 799.

1963

S. Pratap Singh v. *The State of Punjab*

Ayyangar, J.

urged before us *viz.*, that the order was passed *mala fide* and so could not be allowed to stand. Before entering into the details of the allegations made, the evidence in their support and the inferences to be drawn therefrom, we consider it useful to state the principles underlying this branch of the law. The Service Rules which are statutory vest the power to pass the impugned orders on the Government. The expression 'Government' in the context is the functionary within the State who is vested with executive power in the relevant field. Of course, the Constitution vests the executive power in a State in the Governor but he is constitutionally directed to act on the aid and advice of his Ministers. In the case before us it is common ground that it was the Chief Minister who was incharge of the Health Department in which the appellant was employed and it was therefore the Chief Minister as the Minister in-charge of that portfolio who initiated these proceedings though the formal orders of the Ministry were issued by the Secretaries etc. of the Department in the name of the Governor. For the purposes of the present controversy the functionary who took action and on whose instructions the action was taken against the appellant was undoubtedly the Chief Minister and if that functionary was actuated by *mala fides* in taking that action it is clear that such action would be vitiated. In this context it is necessary to add that though the learned Attorney-General at first hinted that he would raise a legal contention, that even if *mala fides* were established against the Chief Minister still the impugned orders could not be set aside, he did not further pursue the matter, but proceeded, if we may say so rightly, to persuade us that *mala fides* was not made out by the evidence on record. Such an argument, if right, would mean that even fraud or corruption, leaving aside *mala fides,* would not be examinable by a Court and would not vitiate administrative orders. As Lord Denning said in *Lazarus Estates, Ltd.* v. *Beasley*(1) :

> "No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud."

In the circumstances we do not consider it necessary to deal with this aspect more fully or in greater detail. If this were put aside, the second ground of attack on the orders may be viewed from two related aspects—of *ultra vires*

(1) [1956] 1 All E.R. 341, 345.

pure and simple and secondly as an infraction of the rule that every power vested in a public body or authority has to be used honestly, *bona fide* and reasonably, though the two often slide into each other. Thus Sir Lyman Duff, speaking in *Municipal Council of Sydney* v. *Campbell*(1) in the context of an allegation that the statutory power vested in a municipal corporation to acquire property had been used in bad faith which was held to have been proved stated :

> "A body such as the Municipal Council of Sydney, authorised to take land compulsorily for specified purposes, will not be permitted to exercise its powers for different purposes, and if it attempts to do so, the Courts will interfere. As Lord Loreburn said, in Marquess of Clanricarde v. Congested Districts Board (79 J.P. 481) :
> "Whether it does so or not is a question of fact." Where the proceedings of the Council are attacked upon this ground, the party impeaching those proceedings must, of course, prove that the Council, though professing to exercise its powers for the statutory purpose, is in fact employing them in furtherance of some ulterior object."

Similarly, in *Short* v. *Poole Corporation*(2) Pollock M. R. observed :

> "The appellants (represented before the Court by Maugham K. C.—afterwards Lord Maugham) do not contest the proposition that where an authority is constituted under statute to carry out statutory powers with which it is entrusted, ... if an attempt is made to exercise those powers corruptly—as under the influence of bribery, or *mala fide*—for some improper purpose, such an attempt must fail. It is null and void : see Reg. v. Governors of Darlington School (6 Q.B. 682, 715)."
>
> In the same case Warrington, L.J., said :
> "No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives and any action purporting to be that of the body, but proved to be committed in bad faith or from corrupt

(1) [1925] A.C. 338. (2) [1926] 1 Ch. 66, 85.

1963

S. Pratap Singh v. *The State of Punjab*

Ayyangar, J.

motives, would certainly be held to be inoperative. It may be also possible to prove that an act of the public body, though performed in good faith and without the taint of corruption, was so clearly founded on alien and irrelevant grounds as to be outside the authority conferred upon the body, and therefore inoperative. It is difficult to suggest any act which would be held *ultra vires* under this head, though performed *bona fide*.

(*Vide* pages 90-91)."

It was really the first aspect of *ultra vires* that was stressed by Lord Parker when in *Vatcher* v. *Paull*(1) at page 378 of the report he spoke of a power exercised for a purpose or with an intention beyond the scope of or not justified by the instrument creating the power. In legal parlance it would be a case of a fraud on a power, though no corrupt motive or bargain is imputed. In this sense, if it could be shown that an authority exercising a power has taken into account—it may even be *bona fide* and with the best of intentions,—as a relevant factor something which it could not properly take into account, in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad. Sometimes Courts are confronted with cases where the purposes sought to be achieved are mixed,—some relevant and some alien to the purpose. The courts have, on occasions, resolved the difficulty by finding out the dominant purpose which impelled the action, and where the power itself is conditioned by a purpose, have proceeded to invalidate the exercise of the power when any irrelevant purpose is proved to have entered the mind of the authority (See *Sadler* v. *Sheffield Corporation*(2) as also Lord Denning's observation *Earl Fitzwilliam etc.* v. *Minister of T. & C. Planning*(3)). This is on the principle that if in such a situation the dominant purpose is unlawful then the act itself is unlawful and it is not cured by saying that they had another purpose which was lawful.

As we said earlier, the two grounds of *ultra vires* and *mala fides* are thus most often inextricably mixed. Treat-

(1) [1915] A.C. 372. (2) [1924] 1 Ch. 483.
(3) [1951] 2 K.B. 284, 307.

ing it as a question of *ultra vires,* the question is what is the nature of the power?; has it been granted to achieve a definite object?—in which case it would be conditioned by the purpose for which it is vested. Taking the present case of the power vested in Government to pass the impugned orders, it could not be doubted that it is vested in Government for accomplishing a defined public purpose *viz.,* to ensure probity and purity in the public services by enabling disciplinary penal action against the members of the service suspected to be guilty of misconduct. The nature of the power thus discloses its purpose. In that context the use of that power for achieving an alien purpose—wreaking the minister's vengeance on the officer would be *mala fide* and a colourable exercise of that power, and would therefore be struck down by the Courts. In this connection we might cite a dictum of Lord Lindley in *General Assembly of Free Church etc.* v. *Overtoun*(1) when the learned Lord said at page 695 :

> "I take it to be clear that there is a condition implied in this as well as in other instruments which create powers, namely, that the power shall be used *bona fide* for the purposes for which they are conferred."

Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by Government of its powers. While the indirect motive or purpose, or bad faith or personal ill-will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the appellant has to establish in this case, though this may sometimes be done (See *Edgington* v. *Fitzmaurice*(2)). The difficulty is not lessened when one has to establish that a person in the position of a minister apparently acting on the legitimate exercise of power has, in fact, been acting *mala fide* in the sense of pursuing an illegitimate aim. We must, however, demur to the suggestion that *mala fide* in the sense of improper motive should be established only by direct evidence that is that it must be discernible from the order impugned or must be shown from the notings in

(1) [1904] A.C. 515, 695. (2) [1885] 29 C.D. 459.

1963

S. Pratap Singh
v.
The State of Punjab

Ayyangar, J.

the file which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts.

Pausing here, we might summarise the position by stating that the Court is not an appellate forum where the correctness of an order of Government could be canvassed and, indeed, it has no jurisdiction to substitute its own view as to the necessity or desirability of initiating disciplinary proceedings, for the entirety of the power, jurisdiction and discretion in that regard is vested by law in the Government. The only question which could be considered by the Court is whether the authority vested with the power has paid attention to or taken into account circumstances, events or matters wholly extraneous to the purpose for which the power was vested, or whether the proceedings have been initiated *mala fide* for satisfying a private or personal grudge of the authority against the officer. If the act is in excess of the power granted or is an abuse or misuse of power, the matter is capable of interference and rectification by the Court. In such an event the fact that the authority concerned denies the charge of *mala fides,* or asserts the absence of oblique motives or of its having taken into consideration improper or irrelevant matter does not preclude the Court from enquiring into the truth of the allegations made against the authority and affording appropriate reliefs to the party aggrieved by such illegality or abuse of power in the event of the allegations being made out.

Before entering on a discussion of the question whether the appellant has established that the action of Government was vitiated by *mala fides,* we consider it pertinent to make a few preliminary observation. In considering the evidence we have kept in view the high position which the Chief Minister holds in the State and are conscious of the fact that charges of a personal nature made against such a dignitary are not to be lightly accepted. We have also borne in mind that charges of personal hostility are easily and very often made by persons who are subjected to penal or quasi penal proceedings against those who initiate them, and have therefore made full allowance for these factors, and we have examined

and weighed the evidence with anxious care. We would only add that the fact that two of our brethren feel differently on this matter has heightened our responsibility and in the care to be bestowed in appreciating the evidence. The Constitution enshrines and guarantees the rule of law and Art. 226 is designed to ensure that each and every authority in the State, including the Government, acts *bona fide* and within the limits of its power and we consider that when a Court is satisfied that there is an abuse or misuse of power and its jurisdiction is invoked, it is incumbent on the Court to afford justice to the individual. It is with these considerations in mind that we approach the facts of this case.

The allegations in the writ petition filed by the appellant on this matter may be summarised as follows :

(1) The appellant was requested by the Chief Minister to perform an operation on his son—Surinder Singh—in April 1960. The operation was performed. The Chief Minister desired that after the operation his son should stay under the care of the appellant at Jullundur during his convalescence. Surinder, however, left the appellant's place and the Chief Minister became angry for the supposed negligence of the appellant in permitting this to happen.

(2) The Chief Minister himself and the members of his family made several requests to the appellant to show undue favours to certain patients who were recommended to the appellant. These were complied with, but when subsequently the appellant refused to comply with further requests the Chief Minister turned hostile.

(3) The Chief Minister's wife had been asking for medicines to be sent to her by the appellant for the use of herself and her relations from the hospital stores of Jullundur. The appellant, however, sent her the medicines, though not from the hospital but buying them himself in the market. The Chief Minister's wife also wanted some expensive articles like Singer Sewing machines etc. to be sent to her gratis. This the appellant did but the refusal to comply with fur-

1963

S. Pratap Singh
v.
The State of Punjab

Ayyangar, J.

ther demands of the same type angered the Chief Minister.

(4) One Kirpa Singh was working as the manager of an automobile concern known as National Motors, Jullundur which was either directly or indirectly owned by Surinder—the son of the Chief Minister. The appellant at the instance of the Chief Minister accommodated Kirpa Singh in his own house and besides provided him with board. This went on for about 7 months but in or about April, 1960 the appellant desired Kirpa Singh to look out for a lodging and board elsewhere and the latter had to do so. This was a further cause of irritation and anger for the Chief Minister.

(5) Several matters recited above were in April 1960 or thereabouts and as a result of the hostility developed by reason of these the appellant was accused, in September 1960, of showing undue favours to Akali prisoners who were lodged at the District Jail at Jullundur. This allegation was false and was later not pressed.

(6) The Chief Minister desired to have the help of the appellant as an expert to instruct the police officers who were conducting the prosecution in what is known as the Karnal Murder case. The appellant had given some sort of assurance to the Chief Minister that the prosecution would succeed. It failed before the Sessions Judge and subsequently the appeal by the State was dismissed by the High Court of Punjab and finally an application for special leave was dismissed by this Court. The Chief Minister became very angry with the appellant because the assurance given to him that the prosecution would succeed had been belied and the Chief Minister felt chagrined at the result.

(7) One Dr. Dhillon who was a Junior Medical Officer in the Punjab Medical Service accompanied the Chief Minister as a medical attendant in 1956-57. Under the rules the Chief Minister was not entitled to this type of medical attention. There was some dispute as regards the

salary payable to Dr. Dhillon during the period when he was with the Chief Minister. The appellant was requested to give a false certificate regarding the services of Dr. Dhillon. The Chief Minister complained that though several years had passed, Dhillon's salary for the 45 days that he had been with the Chief Minister had not yet been paid to him. The appellant refused to comply this demand and this was a further source of irritation and hostility.

The appellant's further case is that as a result of these incidents or sources of irritation and displeasure of the Chief Minister, the Chief Minister was thinking of taking some steps against him and that he got a complaint against him on October 29, 1960 which he sent up for investigation. The charge then made against the appellant was that on July 5, 1960 he had refused to examine a woman-patient who had come to the hospital with an out-door chit and that the husband of the woman was forced to pay a sum of Rs. 16.00 for her examination at his residence. On the excuse that this complaint had been made, the appellant was transferred from Jullundur to Amritsar by an order dated December 6, 1960. It was stated by the appellant that in the State officers were usually transferred only during the months March or April, so that the education of their children etc. might not be interrupted by the change of station, but that his transfer in December was therefore out of the ordinary and done with a view to inconvenience and humiliate him and deprive him of his practice at Jullundur. The appellant thus having realised the hostility of the Chief Minister and not desiring to continue much longer in service, made an application for leave preparatory to retirement. He was reaching the age of 55 on June 15, 1961 and he applied for leave until that period. His leave was sanctioned with effect from December 18, 1960 and this was gazetted on January 27, 1961. It is this leave that was revoked by the impugned orders on June 3, 1961 and under these the appellant was placed under suspension and an inquiry was started later in the matter.

Between these two dates—*i.e.*, between December 1960 and June 1961, however, some events happened which

1963

S. Pratap Singh
v.
The State of Punjab

Ayyangar, J.

are set out in the petition require to be stated. It would be seen that when the leave preparatory to retirement which was applied for was sanctioned, the Government had already with them the complaint made on October 29, 1960 relating to the charge that the appellant had improperly demanded a sum of Rs. 16.00 from a patient desiring treatment at the Jullundur hospital. That related to an incident of July 1960 and was apparently not thought to be serious enough to justify the refusal of the leave applied for. But after the leave was sanctioned, in the issue of the Weekly newspaper Blitz dated the 15th January, 1961 there appeared an article in which allegations were made against the Chief Minister. Several of the allegations were those which we have mentioned earlier as having been made by the appellant in his petition and stated to be the reasons for the hostility of the Chief Minister. The appellant however was not named as such in the article. It must however have been apparent to those acquainted with the matter that it was the appellant from whom these favours were sought or obtained by the Chief Minister. It is the case of the appellant that the Chief Minister who was in Delhi at that time must have been apprised of the contents of the article even on January 13, 1961 and this does not seem improbable because it is common knowledge that copies of this weekly are available in Delhi even two days before the date it bears. In the absence of any affidavit from the Chief Minister, and there is none on the record, it is not possible to say whether the article in the Weekly was or was not seen by him on the 13th. On that day—January 13, 1961, however, the Inspector (Vigilance), Jullundur addressed a communication to the appellant enquiring whether the appellant who had by then gone to Kanpur (it is to be remembered he was then on leave) would come to Jullundur for clarifying certain points in relation to an inquiry which had been ordered by the Punjab Government. It is stated that this was in connection with the complaint regarding the improper receipt of Rs. 16.00 from a patient who had come to the hospital for treatment in July 1960. The Vigilance Inspector made some inquiries of the appellant and examined the records at the hospital in February, 1961. On March 18, 1961 the appellant's wife

wrote a letter to the 'Blitz' confirming the allegations against the Chief Minister which had already appeared in that paper in its issue of January 15, 1961 and in the same month—March 1961 the appellant's wife circulated Members of Parliament and others with the details of the allegations found in the newspaper. It is the case of the appellant that these matters occasioned the hostility of the Chief Minister and that the impugned orders passed in June 1961 were passed not *bona fide* for the purpose of conducting an inquiry into his conduct but to harass and humiliate him and thus wreak vengeance on him for the part that he played in bringing down the reputation of the Chief Minister by the disclosures. As we observed earlier, if the appellant is able to establish that the main object and purpose of the initiation of the inquiry was not in the interest of the Service or to ascertain any misconduct on the part of the appellant, but that the dominant motive and purpose was the harassment and humiliation of the appellant for his refusal to yield to the demands of the Chief Minister or the members of his family at some stages, and in defaming him openly at the later stage, it would clearly be a case of *mala fides* and the impugned orders have to be set aside.

We shall first take up for consideration the several allegations that have been made and see whether they had been satisfactorily made out. Before proceeding further it is necessary to state that allegations of a personal character having been made against the Chief Minister, there could only be two ways in which they could be repelled. First, if the allegations were wholly irrelevant, and even if true, would not afford a basis upon which the appellant would be entitled to any relief, they need not have been answered and the appellant could derive no benefit from the respondents not answering them. We have already dealt with this matter and have made it clear that if they were true and made out by acceptable evidence, they could not be ignored as irrelevant; (2) If they were relevant, in the absence of their intrinsic improbability the allegations could be countered by documentary or affidavit evidance which would show their falsity. In the absence of such evidence they could be disproved only by the party against whom the allegations were made denying the

1963

S. Pratap Singh
v.
The State of Punjab

Ayyangar, J.

same on oath. In the present case there were serious allegations made against the Chief Minister and there were several matters of which he alone could have personal knowledge and therefore which he alone could deny, but what was, however, placed before the Court in answer to the charges made against the Chief Minister was an affidavit by the Secretary to Government in the Medical Department who could only speak from official records and obviously not from personal knowledge about the several matters which were alleged against the Chief Minister. In these circumstances we do not think it would be proper to brush aside the allegations made by the appellant, particularly in respect of those matters where they are supported by some evidence of a documentary nature seeing that there is no contradiction by those persons who alone could have contradicted them. In making this observation we have in mind the Chief Minister as well as Mrs. Kairon against whom allegations have been made but who have not chosen to state on oath the true facts according to them.

Before passing on to a consideration of the details of the several allegations there is one matter to which we ought to make reference at this stage and that is the admissibility and evidentiary value of the tape-recorded talks which have been produced as part of his supporting evidence by the appellant. The learned Judges of the High Court without saying in so many terms that these were inadmissible in evidence, this being the contention raised by the respondent-State, have practically put them out of consideration for the reason that tape-recordings were capable of being tampered with. With respect we cannot agree. There are few documents and possibly no piece of evidence which could not be tampered with, but that would certainly not be a ground on which Courts could reject evidence as inadmissible or refuse to consider it. It was not contended before us the tape-recordings were inadmissible. In the ultimate analysis the factor mentioned would have a bearing only on the weight to be attached to the evidence and not on its admissibility. Doubtless, if in any particular case there is a well-grounded suspicion, not even say proof, that a tape-recording has been tampered with, that would be a good ground for

the Court to discount wholly its evidentiary value. But in the present case we do not see any basis for any such suggestion. The tape-recordings were referred to by the appellant in his writ petition as part of the evidence on which he proposed to rely in support of his assertions as regards the substance of what passed between him and the Chief Minister and the members of the latter's family on the several matters which were the subject of allegations in the petition. Before the written statement of the State was filed, the respondent-State made an application to the Court on August 23, 1961 in which they averred :

> "The respondents are not in a position to give a complete and full reply to the assertions made by the petitioner without inspecting the original records and without knowing and (sic) renderings of the so-called tape-recordings mentioned by the petitioner in his aforesaid petition ..... The applicant, therefore, prays that the petitioner may be ordered to place on record ..... the renderings of the so-called tape-records."

On November 3, 1961 the Court passed an order in which it recorded :

> "As regards the renderings of the tape-records, on which the petitioner relies, learned Counsel for the petitioner ..... undertakes to play the tape-recorder before the respondent within a fortnight from the date of the putting in of the above renderings on a date suitable to both the sides."

Again on December 14, 1961 the State made an application to the Court to modify the order dated November 3, 1961 by directing the appellant to play the tape-records in the office of the Counsel for the State and allow the State to re-tape-record the tape-recordings produced by the appellant, so that a correct copy of the tape-records was available to the respondent-State before filing the written statement. In the applications made by the respondent to the Court for directions regarding the inspection of the tape-records produced by the appellant, and seeking the facility for re-recording, it was explicitly stated that this was for the purpose of the State satisfying itself whether the voices of the persons whose talks were purported to

1963

S. Pratap Singh
v.
The State of Punjab

Ayyangar, J.

have been tape-recorded were truly the voices of those persons. The Court passed an order on January 5, 1962 directing the appellant to file the original tape-records into Court to be sealed in the presence of both the parties and kept in custody of the Registrar of the Court, but this was to be after the records were played before the respondent on January 11, 1962 in the office of the Registrar of the Court. This order was given effect to and the State had the re-recorded copies in their possession to verify the authenticity and correctness of the originals. The written statement of the State was filed in February 1962 only after they had thus their own copies of the tape-records, so that they were in a position to verify (a) whether the voice recorded was that of the person whose voice it professed to be; (b) whether there had been any interpolations or omissions; and (c) whether there had been any other tampering with the records. In the counter-affidavit filed by the State there was no denial of the genuineness of the tape-records, no assertion that the voices of the persons which were recorded in the tape-records were not those which they purport to be or that any portion of the conversation which would have given a different colour to it had been cut off. We should however add that there was a vague statement regarding the tape-record of the talk between the Vigilance Inspector and the appellant with which we shall deal later. It is in the light of these circumstances and this history of the proceedings that the evidence afforded by the tape-recorded talk has to be considered in appreciating the genuineness of the talks recorded and in deciding whether the allegations made by the appellant are substantiated or not.

We shall now take up the allegations in the order in which they appear in the petition and in which we have set them out earlier. The first relates to the incident connected with the operation on the Chief Minister's son—Surinder Singh. Now, in regard to this, Surinder has filed an affidavit in which he has denied that there was any operation performed on him either by the appellant or by any other. There is no documentary evidence that the appellant performed the operation which he claims to have performed in the shape of hospital records. The appellant's explanation for the absence of any such

record was that the operation was necessitated by the nature of the disease which Surinder had contracted and for this reason the Chief Minister desired the operation to be performed in secret. Accordingly the operation was performed not at Jullundur which is a big city where the Chief Minister and his family were well-known but in a rural dispensary about 50 miles away from his headquarters town. The main points that were urged by the learned Attorney General against the appellant's story was : (1) that Surinder has denied it, (2) that no evidence based on any hospital record had been produced to substantiate the story, (3) that the exact date on which the operation was performed was not given, and (4) that the tape-recorded talk would not substantiate the appellant's case that he performed an operation. It would be convenient to take the tape-recorded talks first because it is on them that the appellant relies for corroborating his statement that he did perform an operation on Surinder at the end of April 1960. There are three tape-recorded talks which bear on this incident and these are numbered 6, 2 and 11. Talk no. 2 is the most important of them and is a tape-recorded talk on the trunk-telephone between Mrs. Kairon (the Chief Minister's wife) and the appellant. In the course of the talk the record shows the lady to have asked :

"Mrs. Kairon : How is the young lad ?
Ans. : Your young lad is alright.
Mrs. Kairon : Have you removed off the dressing ?
Ans. : The dressing has come off. There is no dressing over the wound now.
Mrs. Kairon : And; there is no discharge etc.
Ans. : There is no discharge now.
Mrs. Kairon : Is the wound not raw ?
Ans. : No.
Mrs. Kairon : Can he walk about now ?
Ans. : Slightly .....
Mrs. Kairon : There is no other ulcer inside.
Ans. : No, he is quite alright now.
.....

Mrs. Kairon : The thing is that there can develop induration of the wound.

1963

S. Pratap Singh
v.
The State of Punjab

Ayyangar, J.

.....

Ans. : Is it ?

Mrs. Kairon : There is no other ulcer inside. As you said ?

Ans. : No. He is quite alright now."

From the internal evidence furnished by this tape-record itself it is seen that this talk was on May 1, 1960. Talk no. 6 is said to be slightly earlier in date, being towards the end of April 1960. That too is stated to be after the operation and is a tape-recorded talk on a trunk-telephone between Mrs. Kairon and the appellant. This talk was necessitated, according to the appellant, by the fact that Surinder had left the Circuit house at Jullundur, where he had been directed to stay during convalesence, even before he was completely healed and it was the negligence of the doctor in permitting this to happen that is said to have been one of the causes of the appellant incurring the displeasure of the Chief Minister. There are portions of this record which are also relied on to corroborate the appellant that he perfomed an operation on Surinder and to establish that the denial by Surinder is false :

"Mrs. Kairon : Dr. Sahib, did you test his (Surinder's) urine ?

Ans. : Urine is quite alright.

Mrs. Kairon : When was it tested ?

Ans. : It was done *that day*.

Mrs. Kairon : Dr. Sahib, it is 8 days now.

Ans. : We got it tested here when he came."

The appellant submitted that the words "that day" which we have emphasized were a reference to the day on which the operation was performed. In the course of this talk (No. 6) Mrs. Kairon made inquiries as to whether her son Surinder was with the appellant and this inquiry was made because she had information from other sources that he had left Jullundur. When the appellant was asked about this he said in the tape-recorded talk :

"You see, he has tried to be clever with me.

Mrs. Kairon : What ?

Ans. : This Surinder.

Mrs. Kairon : Oh, you know what Sardar Sahib said. He said he did not expect this thing from you.

Dr. P. Singh : From me ?
Mrs. Kairon : Yes.
Dr. P. Singh : Why.
Mrs. Kairon : That he should go away from you.
Dr. P. Singh : No, not from me. From Circuit House.
Mrs. Kairon : He got a trunk call booked and he got engaged in conversation elsewhere and I have found out things from you.
Dr. P. Singh : Look what could I do.
Mrs. Kairon : He said why did you do it if you did not have the strength to keep him.
Dr. P. Singh : He told me he will stay on for 3 or 4 days.
Mrs. Kairon : Sardar Sahib said he did not see much sense in either of you."

The last of the tape-recorded renderings is that numbered 11 and it purports to record a trunk-call talk between Surinder himself and the appellant. Portions of it are relied on by the appellant on both the points (a) that he performed an operation on Surinder, and (b) that Surinder left his care without his knowledge and thus made him incur the displeasure of his parents :

"Surinder : Well Dr. Sahib. You better dictate to me the prescription of that triple dye. I want to apply it.
Ans. : When you come in the evening. You can take it at that time.
Surinder : No. I want to apply now, in the morning.
Ans. : Then, you should have taken it yesterday and then left. .....
.....
Surinder : Alright, it was a mistake. Now you tell me.
Dr. P. Singh : Otherwise it is alright now ?
Surinder : A little bit of stuff came out of it, sort of blood.
Dr. P. Singh : It would be just a nominal sort of affair?
Surinder : Yes please."

The above is in so far as regards the operation and next as to Surinder leaving the appellant's care we were referred to the following in the recorded talk :

"Dr. P. Singh : You went away, all on the quiet.
Surinder : I had to come here.

1963

S. Pratap Singh
v.
The State of Punjab

Ayyangar, J.

Dr. P. Singh : Why ? With me your understanding was that you will go only after showing me in the evening.

Surinder : I will come to you in the evening.

Dr. P. Singh : No, you will come today, but yesterady you went away without notice. We came to know of it only when the servant came and reported that the room is all vacant, and that Sardar Sahib has gone, giving a go by."

The question is whether this last (No. 11) tape-recorded talk does or does not establish that the appellant's story about his having operated on Surinder was true. In the first place, Surinder, through the affidavit that he made, denies that any operation was performed on him by the appellant or by anyone else, does not deny that the voice recorded in talk no. 11 is his. Besides, Surinder while stating in his affidavit that he was diabetic, admitted that his urine had been examined by the appellant—a matter referred to in talk no. 6 between Mrs. Kairon and the appellant. Of course he did not say in his affidavit that the examination of his urine referred to in this talk, was that referred to by him in his affidavit but that is not very material. Nor has he offered any explanation for his statement in talk no. 11 of "a little bit of the stuff coming out". His version, however, as regards the recorded talks was :

"I heard the tape-records prepared from the tape-records recorded by the petitioner. The renderings are not intelligible and clear and are denied."

If it was not intelligible, (we need hardly add that we do not agree in this characterisation) how they could be denied is not clear, nor is one able to appreciate as to why the talk should be unintelligible to him if they recorded what he spoke. That is so far as rendering no. 11 is concerned. But in regard to renderings 2 and 6 which purport to be a record of the talks between the appellant and Mrs. Kairon there is no affidavit from Mrs. Kairon denying the authenticity of her voice or of the talk, as recorded. No doubt, Surinder in his affidavit denies that there was any talk between the appellant and his mother regarding supply of medicines and he also states that the tape-records referred to by the petitioner are all forged,

but in the context the forgery attributed could only relate to that portion in which Mrs. Kairon is recorded to have asked for medicines. If the state could get Surinder to file an affidavit in regard to the tape-recorded talk, we do not appreciate why no affidavit from Mrs. Kairon was filed to give her version as to whether she really talked with the appellant as recorded, and if she did so in what respects the record was wrong. In the absence of any such affidavit or statement by her on oath that the voice recorded in the several talks and in particular in talks 2 and 6 was not hers or that the record had been manipulated, we cannot but hold that the records are genuine and that conversations took place as recorded.

The next question is whether these show that the appellant performed the operation. We believe we have extracted sufficient from these talks to show that they do indicate unmistakably that Surinder had undergone an operation sometime before the beginning of May 1960. The statement of Surinder, therefore, that he underwent no operation by anyone must obviously be discarded as untrue and no value can be attached to the denial contained in the affidavit that he has filed. If really he had undergone an operation and questions regarding the condition of his wound, the occurrence of discharge etc. are the subject of talks between Mrs. Kairon and the appellant in talks 2 and 6 and between Surinder himself and the appellant in talk 11, it stands to reason, in the absence of any rational or reasonable explanation by Mrs. Kiaron, that the appellant was the person who had performed that operation.

The question that next falls to be considered is whether the operation was entrusted to the appellant by the Chief Minister or not. Apart from the probabilities of the case, the extracts we have made from the tape-recorded talks no. 2 & 6 and the reference to Sardar Saheb would indicate that the Chief Minister was concerned in entrusting the operation to the appellant and the inference is more readily drawn because in the face of the allegations in the affidavit and the tape-recorded talk between the appellant neither Mrs. Kairon, nor the Chief Minister has placed her or his version of the matter before the Court by making any statement on oath. In the circumstances we have no

1963

S. Pratap Singh
v.
The State of Punjab

Ayyangar, J.

hesitation in holding that it was at the instance of the Chief Minister that the appellant undertook the operation on the Chief Minister's son.

It was next said that even assuming the above conclusion were justified, the statement in the tape-recorded talk which indicated the Chief Minister's displeasure at the conduct of the appellant in permitting his son to leave Jullundur before he was completely cured, was inadmissable in evidence for proving what the Chief Minister said to his wife and on that account we should hold that hostility on the part of the Chief Minister owing to this incident was not established. It is true that the statement of Mrs. Kairon as to what the Chief Minister told her would be merely hearsay and would not be admissible in evidence as a statement of the Chief Minister but the tape-recorded talk does show that she herself was greatly displeased with the appellant and it was really to emphasise the displeasure of the family and its head that the Chief Minister's name was brought in. In the circumstances we do not consider that the respondents derive any advantage from this technical objection to the reception of the Chief Minister's statement second-hand. The leaned Attorney-General also submitted that the exact date of the operation was not given nor was the place where it was performed set out in the affidavits and that these detracted from the value of the allegations but we do not consider that in the face of the recorded talks and the inference deducible therefrom that an operation was performed by the appellant sometimes towards the end of April 1960 very much turn on these factors. In making this statement regarding the date we have in mind the reference in talk no. 2 to "tomorrow" as being the 2nd of May.

The next allegation relates to the requests made by the Chief Minister himself and the members of his family for undue favours to be shown to certain patients who were recommended for medical certificates or for special treatment by the appellant at the hospital. This allegation was denied by the State, but as stated earlier, the denial has little force because the only persons who were in a position to contradict the appellant have not come forward to state anything on oath. The allegation has, therefore, to be considered with reference to the documentary evidence on which reliance

was placed. They are Exs. B-1 to B-19 which are recommendations by either the Chief Minister, his sons, his brother or his sister introducing certain patients to the appellant and suggesting that they be attended to properly or their requests granted. That anything improper was required to be done by the appellant or anything contrary to the rules was expected to be done by him or was suggested is not borne out by these documents. It is the appellant's submission that of these only two were not complied with—the request contained in B-2 and B-5 but even as regards this there is no such specific assertion on the record, nor is it easy to see why the appellant refused to comply with these requests. In the circumstances we are unable to hold that this item of misunderstanding is made out. But we must add that as these slips or chits were addressed to the appellant, some by the Chief Minister, others by one or other of his two sons, still others by his brother and one by his sister, they do establish that at the dates which they bear the appellant was a great friend of the Chief Minister and enjoyed the confidence of the Chief Minister and the member's of family.

The next item may be considered separately under two heads; (1) Supply of medicines to the family of the Chief Minister at the request of Mrs. Kairon and others, and (2) the supply of two Singer Sewing machines to Mrs. Kairon. Needless to say that these allegations have, no doubt, been denied by the State, but there is no denial by the only persons who could effectively contradict the appellant. As regards the supply of medicines, the appellant's case is that they were sent by post by registered packets or parcels and in corroboration of his statement he has produced six postal receipts of registered packets or parcels despatched to Sardarni Partap Singh Kairon. These bear dates from 1957 to 1959 and they indicate that between Re. 1/- to Rs. 2/- was paid as postal charges for their transmission. Surely, something must have been sent in these packets or parcels and received by Mrs. Kairon but there is, on the side of the respondent, no positive statement as to what these packets contained. It, therefore, appears to us that it is not possible to discard the appellant's statement that these packets contained medicines despatched to the Chief Minister's wife, for the use of the members of the family. It matters

1961

S. Pratap Singh
v.
The State of Punjab

Ayyangar, J.

little, for the purpose of this case, whether the medicines were purchased at the cost of the appellant, as he says, or were taken from the hospital. But whichever happened, it is clear that articles of some value were despatched from time to time over this three-year period by the appellant to Mrs. Kairon. The tape-recorded talks do lend support to the appellant's story that he was required to send medicines and that he complied with such demands. In talk no. 3 which was with Mrs. Kairon and is stated to have been in August, 1959 :

"Appellant : I shall get the medicines delivered to you today.

Mrs. Kairon : Those tablets too and the mixture too.

.....

Appellant : What are those tablets ?

Mrs. Kairon : .... in those bottles were brown brown tablets .....

Appellant : I shall send them straightaway .....

.....

.....

.....

Appellant : I shall send you the injections also.

Mrs. Kairon : Alright."

Then we have talk no. 1 which purports to be a record of conversion over the trunk-telephone between Mrs. Kairon and the appellant and which is said to be in March 1960, but for our present purpose the date is not very material. We would extract the following from this talk :

"Mrs. Kairon : The medicines have been received.

Appellant : Leave the question of arrival of medicines

.....

.....

.....

.....

Mrs. Kairon : You sent injections.

Appellant : I had sent you those injections.

Mrs. Kairon : Yes .... they were 4 injections.

.....

.....

.....

Mrs. Kairon : Those tablets have not been received.

Appellant : Which tablets.

Mrs. Kairon : Those capsules.
Appellant : Those brown.
Mrs. Kairon : Yes.
.....
.....
.....
.....
Appellant : You had not asked for those.
Mrs. Kairon : Well. Does not matter.
Appellant : I will do it now."

Lastly, we have talk no. 2 which appellant had with Mrs. Kairon and is stated to have been in May 1960 in which the following passages occur :

"Appellant : The medicines that you had asked for have arrived. When you come you take it.
.....
.....
.....
.....
Mrs. Kairon : You give it to Raghbir Singh (General Manager, Roadways).
Appellant : You know those injections of B Complex that you had asked for.
Mrs. Kairon : Yes.
Appellant : You had asked for the B Complex injections. Isn't it ?
Mrs. Kairon : Yes.
Appellant : I have got those here."

In the face of the support afforded by the documentary evidence and the tape-recorded talks, coupled with the absence of any denial or explantion of these matters by the persons who alone could deny them, we feel unable to attach any value to the affidavit of Surinder denying that any medicines were called for or supplied.

The appellant says that when demands of this type increased he refused further to comply with them, but there is no positive evidence of any demand which he refused to comply with and thus incur the anger or displeasure of the Chief Minister. But notwithstanding the absence of that type of evidence it is clear that until 1959, at least, as is shown by these postal receipts and even till April-May

1963

S. Pratap Singh
v.
The State of Punjab

Ayyangar, J.

1960—as disclosed by the tape-recorded talks, the appellant was on the friendliest terms with the Chief Minister and some explanation has to be forthcoming as to why there was a sudden change of attitude from May 1960 or thereabouts and more particularly after January 1961. It is in the light of this circumstance that the evidence afforded by the tape-recorded talks regarding the operation on Surinder Kairon and of the article in the Blitz to which reference has already been made assume crucial importance.

The second head of this item relates to the supply of the sewing machines. We consider that this portion of the appellant's case has been established beyond reasonable doubt by Exs. C-7 to C-10 which have all been referred to by Dayal, J. in his judgment and we entirely concur with him in holding that this allegation has been completely proved. The learned judges of the High Court discarded the appellant's case because of the affidavit of Mrs. Sodhi but we agree with Dayal, J. that this would not explain either C-8 or C-10 which proved that a wooden case with the words 'Singer Sewing Machine' stencilled or on a label at the top was sent through the manager of the Punjab Roadways to Mrs. Kairon. The statements contained in the affidavits filed by Sri Pahwa, the Roadways manager as well as by Om Prakash, Clerk of the Punjab Roadways are most artificial and apart from the discrepancies as regards the measurements and weight of the wooden box which was transported by them, and the improbability of their having noted or remembered the details without any written record then made, they failed to offer any explanation for the label or stencilling at the top referred to in Ex. C-9. Besides, the tape-recorded conversation no. 3 between Mrs. Kairon and the appellant in which there is a reference to the colour of the machine that was sent, makes it clear that the appellant's story of his having sent a machine to Mrs. Kairon is true. It is somewhat surprising that though Ex. C-7 to C-10 were annexures to the writ petition and the respondents had copies of the tape-recorded talks with them before they filed their statements, they contented themselves with filing these affidavits of Sri Pahwa and Om Prakash and Mrs. Sodhi and abstained from letting the court know what Mrs. Kairon had to say on the matter. This Sewing Machine incident was in July 1959 and it shows that up to that date there was com-

plete friendliness between the Chief Minister and the appellant. The appellant's further allegation that Mrs. Kairon or the other members of the Chief Minister's family demanded of him the supply of other costly articles and that his refusal to comply with them angered the Chief Minister, must be discarded as an embellishment for which there is no support in the evidence placed before the court.

The next item of the source of hostility alleged by the appellant is that he sent out of his house Kirpa Singh, the manager of an automobile concern of the Chief Minister's son—Surinder—in or about March-April 1960 after having permitted him to stay there for about 7 months. Surinder has filed an affidavit in which he has denied his ownership of the automobile concern and also that Kirpa Singh was provided with board and lodging by the appellant at the instance of his father. Kirpa Singh also made an affidavit to the same effect. Two matters however, stand out prominently. The first is that it cannot be doubted that Kirpa Singh is a great friend both of the Chief Minister and his son. Tape-record no. 15 which purports to record the talk between Kirpa Singh and the appellant brings this out. It was sought to discount the evidentiary value of this talk by the circumstance that the appellant had brought about this talk designedly in order to tape-record the conversation. We do not, however, agree that it has any such effect. The reality of that talk and the correctness of the tape-recording is not denied by Kirpa Singh in the affidavit he filed and if he really spoke the words which that record shows he did the facts above stated are made out. That Kirpa Singh was the manager of an automobile concern in Jullunder is not in dispute but both Surinder as well as Kirpa Singh, in their affidavits, have studiously refrained from stating who the owner of that concern was beyond stating that Surinder is not the owner. We consider this averment most disingenuous and least frank. That Kirpa Singh was afforded board and lodging at the appellant's house is also admitted. It was not suggested that Kirpa Singh was a friend of the appellant otherwise than as a friend of the Chief Minister and his son, and this tape-record 15 makes clear. It does not, therefore, stand to reason that the appellant would have undertaken the cost and incovenience of providing Kirpa Singh with board and

1963

S. Pratap Singh
v.
The State of Punjab

Ayyangar, J.

lodging except to oblige the Chief Minister and his son (2) It is also a fact that Kirpa Singh moved out of the appellant's place at the end of March 1960 having stayed there from September 1959 (vide Ex. D-1). The question immediately arises whether this was because of the disinclination on the part of the appellant to continue to retain him in his house. Having regard to the other circumtances which have already been mentioned, of the undercurrent of hostility borne by the Chief Minister which started roundabout this time, we are inclined to accept as true the appellant's version that he sent Kirpa Singh out of his house in preference to the story of Kirpa Singh that he went out of his own accord. If the Chief Minister was obliged by the appellant providing board and lodging to Kirpa Singh, it would not be a violent inference to draw that the Chief Minister was angry with the appellant for having sent Kirpa Singh out.

Some of the other matters set out as those which led to the hostility of the Chief Minister are also made out, such as for instance that the appellant's services were utilised by the Chief Minister in connection with the Karnal murder case (vide talk no. 7 with the Chief Minister himself) but as we consider them to be of minor significance, we do not propose to deal with them in any detail, particularly as it would be sufficient to proceed on the basis of the items earlier discussed.

Next we have the fact that notwithstanding that on the 29th of October 1960 there was some complaint received by the department regarding his having improperly taken Rs. 16 from a patient in July 1960, he was granted leave preparatory to retirement as and from December 18, 1960. In other words, the Government had no idea at that date that charges should be formulated against the appellant and that his retirement should be postponed for completing such an inquiry. We have then the circumstance that in all the earlier Confidential Reports relating to the appellant there was nothing wrong found with him and his conduct and character were not the subject of any adverse comment. It was only subsequently, long after the close of the year 1960, that an adverse remark was made against the appellant in respect of the year 1-4-59 to 31-3-60 and this was communicated to him only late in February 1961. The appellant

complains that this was really an after-thought and was brought in long after that year was over in order to afford some justification for the charges that were eventually made against him. What we have stated earlier regarding the unfriendly feelings which developed with the Chief Minister from about April-May, 1960 onwards seems to lend some support to this suggestion.

We have next the circumstance connected with the article in Blitz which appeared in its issue dated January 15, 1961. That seems to be the starting point of the action taken against the appellant, for on January 13, 1961 the Vigilance Officer sent a communication to the appellant to offer his explanation in regard to certain charges which were then the subject of inquiry. In the order dated the 3rd June, 1961 by which the appellant was placed under suspension there is reference to three inquiries—one dated October 29, 1960, another of January 11, 1961 and the third dated April 17, 1961. The dates apparently are a reference to the dates of the several complaints. The order refers to investigations made by the Vigilance Department into certain complaints against the appellant but though the *bona fides* of these inquiries as well as the *bona fides* of the action taken under the impugned order were questioned the report of the Vigilance Inspector was not placed before the Court to enable it to judge what exactly the complaints were and whether they were the same as the charges listed in the charge-sheet against the appellant. The above has to be judged in the context of the feature that there is a tape-recorded conversation which the appellant had with the Vigilance Inspector (tape-record no. 16) in the course of which the Inspector appears to suggest that he himself did not believe in the reality of the complaints. In the counter affidavit filed by the State it was stated that the Vigilance Inspector "who has been made to hear a copy of the tape-records in question has reported that the tape-records are unintelligible and as such it is not possible to compare the renderings with it. He has therefore reported that the talk, as disclosed in the rendering took place between him and the petitioner but that the rendering appeared to have been twisted by the petitioner according to his own liking". The Vigilance Inspector himself made no affidavit nor was there any denial even by the State that the voice recorded as that of the Vigilance

1963

S. Pratap Singh
v.
The State of Punjab

Ayyangar, J.

Inspector was really his. The tape-recorded talks have been translated—the originals having been heard by the State officials as well as by the Inspector and we do not see any justification for the complaint that they were unintelligible. There is, therefore, no reason why it was not possible to say (a) that there was no talk, (b) if there was, what exactly was its purport, and (c) where and in what respects the tape-recording departed from the truth either by way of addition or omission. The talk, as recorded, as already stated would appear to suggest that the Vigilance Inspector did not believe in the truth of the complaint. That, however, might not be very relevant for deciding whether the complaint was true or false but in the face of that recorded conversation is was certainly necessary for the State to produce the Inspector's report for countering the case of the appellant that the charges were invented for the purpose of enabling the State to harass and humiliate him.

Lastly, it is rather curious that some of the charges which are to be the subject of enquiry relate to a period long anterior to June 1961. For instance, charge 2(b) is concerned with an illegal demand and receipt of sum of Rs. 100/- from a patient who came to the hospital on March 13, 1957. Similarly, there are others which had been made earlier but had been dropped or their falsity had been admitted on earlier occasions but were stated to have been revived for the purpose of justifying this inquiry. In the view we entertain that the action against the appellant was taken because of the matters we have held proved and because of the charges made against the Chief Minister in the article in the Blitz it is not necessary to discuss minutely as to whether the charges could be true or were merely invented. The facts establish that up to March-April 1960 the appellant was on the best terms with the Chief Minister and the members of his family. He was going out of his way to oblige the Chief Minister and do his bidding, though as an officer of the position and status of the appellant this was hardly conduct which should properly be expected of him. Possibly, his being kept at Jullunder without transfer for four years was because of this failing on his part. From April 1960 onwards we find that there is a change in the attitude of the Chief Minister. The operation on Surinder and the incidents connected with it and the sending out of Kirpa

Singh relate to this period. This apparently led to the order for his transfer from Jullunder to Amritsar. Having fallen from grace, the appellant did not apparently consider it safe to continue in service and hence applied for leave preparatory to retirement and this was granted. Immediately he got to know that he had obtained this leave he was apparently emboldened to make public the improper acts which he himself had done for pleasing the Chief Minister and curry his favour and the article in the Blitz was obviously inspired by him. When this came to the notice of the Chief Minister in the middle of January 1961 stern action followed—first the Vigilance Inspector's communication of the 13th January followed by the adverse report against the appellant for 1960 in February 1961 and the further charges against him in April 1961 which led to the passing of the impugned orders. In the circumstances we are satisfied that the dominant motive which induced the Government to take action against the appellant was not to take disciplinary proceedings against him for misconduct which it bona fide believed he had committed, but to wreak vengeance on him for incurring his wrath and for the discredit that he had brought on the Chief Minister by the allegations that he had made in the article which appeared in the Blitz in its issue dated January 15, 1961 followed by the communication to the same newspapers by the appellant's wife, in which these allegations were affirmed and in large part we have found to be true. We therefore hold that the impunged orders were vitiated by *mala fides,* in that they were motivated by an improper purpose which was outside that for which the power or discretion was conferred on Government and the said orders should therefore be set aside.

We therefore allow the appeal and set aside the order dated June 3, 1961 revoking the leave granted and placing the appellant under suspension and the order dated June 29, 1961 directing an inquiry into the charges against him.

As the appellant has failed to make out the other point about the orders being contrary to the Service Rules we direct that there shall be no order as to costs, here and in the High Court.

RAGHUBAR DAYAL J.—This appeal, on a certificate granted by the High Court of Punjab, is directed against

Raghubar Dayal J.

1963

S. Pratap Singh v. *The State of Punjab*

Raghubar Dayal J.

its order dismissing the appellant's petition under Art. 226 of the Constitution praying for quashing, by a writ of certiorari or other suitable directions, the orders of the Punjab Government (i) suspending him; (ii) revoking his leave; (iii) compelling him to continue in service after he had attained the age of superannuation, and (iv) ordering a departmental enquiry against him.

The appellant, Sardar Partap Singh, Joined the Punjab Civil Medical Service, Class I, in 1947. He joined the service as a direct recruit on August 21, 1947. His previous service in the Indian Medical Service from 1934 to 1939, in the Punjab Civil Medical Service from April 1940 to June 1941 and in the Indian Military Service in temporary rank till about the end of 1945, has no bearing on the terms of his service as a member of the Punjab Civil Medical Service, Class I.

The appellant reached the Selection Grade of the Civil Medical Service, Class I, in January 1955 and was transferred to Jullunder as Civil Surgeon in April 1956. He remained there till he proceeded on leave preparatory to retirement sometime in December 1960. His leave was sanctioned on December 18, 1960, and was notified in the Punjab Gazette dated January 27, 1961.

On June 3, 1961, the Governor of Punjab ordered the suspension of the appellant with immediate effect as the Government had decided that a departmental enquiry be instituted against him under r. 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952. The Governor further passed an order under r. 3.26(d) of the Punjab Civil Srvices Rules. These rules were issued under the proviso to Art. 309 of the Constitution and came into force from April 1, 1953. They have been referred to as the 1959 rules in the judgment of the High Court and at the hearing as they were amended from time to time and were re-printed in 1959. We shall also refer to them as the 1959 rules. The Governor's order under r. 3.26(d) of these rules was that in view of the appellant's reaching the age of superannuation on June 16, 1961 he be retained in service beyond that date till the completion of the departmental enquiry.

The orders of the Governor were communicated to the Director, Health Services, Punjab, by the Secretary to the

Government in the Medical and Health Department by his letter Annexure J dated June 3, 1961. The Director, Health Services, communicated these orders to the appellant by a letter, Annexure I, dated June 3, despatched under postal certificate. He further sent a copy of that letter and its enclosures by registered post to the appellant on June 5, 1961. The registered cover was further marked 'express delivery'. Copies of this letter were sent to the then Civil Surgeon, Jullunder, and the Accountant General, Punjab, for information.

On June 10, 1961, notifications about the Governor's placing the appellant under suspension and fixing his headquarters at Chandigarh and about his revoking, with effect from June 3, the leave preparatory to retirement which had been sanctioned to him and retaining him in service until the enquiry into the charges against him be concluded and a final order passed, were published in the Punjab Government Gazette Extraordinary dated June 10, 1961. The Director, Health Services, Punjab, forwarded to the appellant, with his letter dated 3/11th of July 1961, a memorandum dated June 29, 1961, statement of charges and statement of allegations which he had received from the Secretary to Government, Punjab, Vigilance Department, for the appellant's submitting such explanation as he might desire. This letter purported to be with reference to enquiries nos. 70, 3 and 27 dated October 29, 1960, January 11, 1961 and April 17, 1961 respectively against the appellant.

The appellant challenged, by his writ petition, the legality of the orders of suspension, revocation of leave, retention in service after the date of superannuation and institution of the departmental enquiry, on various grounds. The competency of the Governor to make the orders was questioned. It was alleged that unjustified personal grievances arose between the appellant and Sardar Partap Singh Kairon, Chief Minister of Punjab, in or about 1960, that the impugned orders were passed *mala fide* in the exercise of power, if any, vested in the respondent, the State of Punjab in the Ministry of Health, that this was an abuse of power and was intended to feed the grudge of the Chief Minister against him.

1963

S. Pratap Singh
v.
The State of Punjab

Raghubar Dayal, J.

The respondent State refuted the contention that the impugned orders were passed *mala fide* on account of the alleged grievances of the Chief Minister and stated that the Government was competent under rules governing the services of the appellant to pass the impugned orders and that the appellant's allegations had nothing to do with the orders suspending him and revoking his leave preparatory to retirement.

The High Court agreed with the contention for the respondent and dismissed the appellant's petition. On the appellant's application, it granted the necessary certificate under Art. 133(1)(c) of the Constitution.

The appellant has questioned the correctness of the impugned orders, broadly speaking, on two grounds. One is that the rules governing his service did not empower the Governor to pass the impugned orders. The second is that the impugned orders were passed *mala fide* as the Chief Minister, who was in charge of the department of Health, bore ill-will towards him.

The first contention has been urged before us in various ways and we deal with the more salient and important aspects urged to support the contention that the impugned orders could not have been passed by the Governor in view of the various rules.

It is contended that leave, once sanctioned, cannot be revoked after the officer has proceeded on leave. He can only be recalled to duty. The appellant was not recalled to duty as he was not posted to any post of a civil surgeon.

Rule 8.15 of the 1959 rules reads :

"Leave cannot be claimed as of right. When the exigencies of the public services so require, discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it.

* * * * * *

It follows therefore that the authority granting leave has the discretion to revoke it. There is no restriction on the power of revocation with respect to the time when it is to be exercised. It can be exercised before the officer to whom leave was granted proceeds on leave. It can also be revoked after he has proceeded on leave. Revocation of leave simply means cancelling the leave granted.

The exigency necessiating the revocation of leave may arise after the officer has proceeded on leave. Rule 8.3 has no bearing on the question as it provides that the rules following it govern the procedure for making applications for leave and for granting leave in India. It deals with the procedure and not with the right of the officer to leave or with the power of the necessary authority to sanction or refuse leave or revoke leave. Rule 8.42 deals with matters incidental to the recall from leave and in no way affects the discretion of the authority to revoke leave. In fact, recall to duty must follow the revocation of the leave with respect to the period not availed of till then.

The next contention is that when a Government servant proceeds on leave preparatory to retirement, he ceases to hold office and to be in the employment of Government and that in fact he practically retires on the date he avails of the leave and consequently no question of his suspension can arise. This contention, again, has no force. A Government servant is in service till his service terminates and the service can terminate only by dismissal, removal or retirement. The date from which a Government servant is on leave preparatory to retirement cannot be treated as the date of his retirement from service.

It is also urged that a Government servant on leave preparatory to retirement cannot be suspended as suspension means a person's ceasing to work on the post he holds and the public servant on such leave holds no office or post and therefore he cannot be effectively suspended. Suspension of a Government servant, during the course of his service, simply means that no work is to be taken from him during the period of suspension. The Government servant does not work on a post during the period of his suspension. If he is actually discharging the duty of a certain office prior to suspension, the order of suspension would mean that he would cease to work on and discharge the duties of that post. If at that time he is not working on any post but is on leave, no question of his actually ceasing to work or giving up the discharge of duty arises, but that does not mean that the order of suspension would be ineffective. The Government servant, during suspension or on leave, holds a lien on his permanent post in view of r. 3.13 unless his lien is suspended or is transferred under the appropriate

1963

S. Pratap Singh v. *The State of Punjab*

Raghubar Dayal, J.

rule and so has a title to hold that post when under suspension or on leave.

We may refer to the case reported as *Khem Chand* v. *Union of India*(1) wherein the rule that a Government servant be deemed to be on suspension during the period between the date of dismissal and the date of its being set aside, was held valid. Suspension during such period is analogous to suspension during the period of leave after revocation of leave for that period.

Another contention is that the order revoking the leave must precede the order of suspension, and as the order of suspension was before the revocation of his leave it is bad. We do not agree with this contention. Notifications about the suspension and revocation of leave from June 3, 1961, were issued on June 3, 1961. The order of suspension bears an earlier number than the order about the revocation of leave. The order in which the two orders were issued does not affect in substance the validity of the two orders so long as the Governor had the power to suspend the appellant and revoke his leave. Orders may be issued in any sequence.

The next contention is that these orders of June 3 were actually communicated to the appellant after the date of his retirement and is therefore ineffective. The appellant's date of birth is June 16, 1906. The order of suspension reached the appellant, according to his statement, on June 19, 1961, though it was despatched by the Director, Health Services, Punjab, on June 3, 1961. The envelope containing the letter was addressed to the appellant by his Kanpur address which he appeared to have furnished to the office. The appellant was apparently not at Kanpur when the letter reached him and the letter took unduly long on being redircted to the address where it was delivered to the appellant. There is not sufficient material on the record to show when it was redirected and what caused this delay. The Director, Health Services, not only addressed an ordinary cover under postal certificate to the appellant but also followed it up by a registered letter on June 5. The Government, not having received an acknowledgement of the appellant with respect to the receipt of the orders of suspension etc., published the orders in the Punjab

(1) [1963] Supp. 1 S.C.R. 229.

Government Gazette extraordinary dated June 10. Ordinarily, the notification about these orders would have been published in the Gazette in due course. They were published in the Gazette Extraordinary as the Government, it appears from the written statement, had the impression that the appellant was avoiding the receipt of the letters addressed to him. There was a reason for their anxiety to see that the orders could be made known to the appellant as he was due to retire from June 16, 1961. The newspapers also, according to the appellant's own petition, published in their issues of June 15 about the notification concerning the respondent in the Gazette Extraordinary. The orders of the Government ordinarily take effect from the moment they are issued except when they cannot be effective due to their nature. An order of suspension of the appellant when he was on leave could be effective from the moment it was issued.

The appellant was on leave and was not discharging any official functions. If he had been actually on duty, the order of suspension would have taken effect from the moment it reached him and from which moment alone the appellant could have complied with that order by ceasing to work any further in the discharge of his duties. It is therefore immaterial whether the publication of the orders in the Gazette Extraordinary amounted to sufficient notice to the appellant of the various orders and whether the letters communicating to him the orders reached him after the due date of retirement. In the present case the orders were effective from June 3, 1961, and their validity and effect did not depend on the date of communication to the appellant.

The case reported as *Bachhittar Singh* v. *State of Punjab*(1) is not apposite and does not support the contention. It was not a case of suspension. In that case a Government servant preferred an appeal against his dismissal by the Revenue Secretary of Pepsu Government to the state Government of Pepsu. The Revenue Minister recorded his opinion that instead of dismissing him he be reverted to his original post. Thereafter, the State of Pepsu merged with the State of Punjab. The remarks of the Revenue Minister were not communicated to the appellant.

(1) AIR 1963 S.C. 395.

1963

S. Pratap Singh v. *The State of Punjab*

Raghubar Dayal, J.

Subsequent to the merger, the Chief Minister, Punjab, dismissed the appeal. This order was communicated to the appellant. The remarks of the Revenue Minister of Pepsu were held not to be an order of the State Government and, in the context of that case, it was said at p. 398:

> "Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by cl. (1) of Art. 166 and then it has to be communicated."

The remarks of this Court in *State of Punjab* v. *Sodhi Sukhadev Singh*(1) and quoted in this case, do not go so far and lay down that a final decision by the Council of Minister becomes an order when the Rajpramukh acts upon it by issuing an order in that behalf to the respondent. The further following remarks should be construed in the same context:

> "Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and therefore till its communication the order cannot be regarded as anything more than provisional in character."

These observations therefore refer to an order made in the circumstances of that case. It is to be noted that in both these cases, no formal order was at all made by the Government. The impugned orders in the present case were formally issued by the Governor on June, 1961, and were even published in the Gazette extraordinary on June 10. They were final orders. Of course, the Governor could, at any time, pass further orders superseding those orders. The possibility of a change in the order is not the main basis for considering whether a certain order is effective or not.

The main contention of the appellant, however, is that r. 3.26(d) of the 1959 rules is not applicable to him and that if it be applicable, his case is not covered by the terms of that rule. The appellant joined the Punjab Civil Medical

(1) AIR 1961 S.C. 493, 512.

Service, Class I, in 1947. At that time the Punjab Civil Medical Services, Class I (Recruitment and Conditions of Service) Rules, 1940, hereinafter called the Medical Rules, were in force. They were made by the Governor of Punjab in the exercise of powers conferred on him by cl. (b) of sub-s. (1) and cl. (b) of sub-s. (2) of s. 241 of the Government of India Act, 1935. Rule 13 of the Medical rules is :

> "In respect of leave, pension and other cognate matters not specifically mentioned in these rules, members of Service shall be governed by such general rules as may be framed in that regard by the Governor of the Punjab, under cl. (b) of sub-s. (2) of s. 241 of the Government of India Act, 1935."

The Punjab Civil Services Rules were also made by the Governor of Punjab under s. 241 of the Government of India Act and came into force from April 1, 1941. They too were in force at the time the appellant joined service. Rule 3.26 (d) did not find place in the 1940 rules. The 1959 rules which, as already stated, really came into force in 1953, have this rule. It reads :

> "A Government servant under suspension on a charge of misconduct shall not be required or permitted to retire on his reaching the date of compulsory retirement but should be retained in service until the enquiry into the charge is concluded and a final order is passed thereon."

The contention for the appellant is that the rule with respect to the retirement of a Government servant relates to a matter cognate to pensions and that therefore, in view of r. 13 of the Medical rules, matters of his retirement would be governed by the 1941 rules. We are of opinion that the question of retirement of a Government servant on superannuation or otherwise is not a matter cognate to pensions. Pension follows retirement and may be said to be incidental to it. Rule 13 of the Medical rules therefore does not govern the terms of retirement of the appellant. It is r. 17 of the Medical rules which would govern the matter of his retirement. This rule reads:

> "In all matters not expressly provided for in these rules, the members of the service shall be governed by such general rules as may have been or may hereafter be

1963

S. Pratap Singh v. *The State of Punjab*

Raghubar Dayal, J.

framed by Government and by the provisions of the Government of India Act, 1935."

It is clear from this rule that in the matter of retirement the appellant would be governed by such general rules as might have been made by the Government at the time the Medical rules were made or as would be made by the Government subsequently. The latest general rules governing the retirement of Government servants will govern the retirement of the appellant even if it be assumed that the Medical rules still govern his conditions of service.

Rule 3.26(d) is therefore applicable to the appellant.

The further contention of the appellant is that this rule applies to a government servant under suspension on a charge of misconduct and therefore to a Government servant against whom a formal departmental enquiry has been instituted for enquiring into the charges of misconduct framed against him and that no such charge being framed and no such departmental enquiry being instituted prior to the order of suspension of the appellant on June 3, 1961, the order of suspension cannot be treated to be an order under r. 3.26(d). We do not agree. There is no Justification to give such a restricted meaning to the word 'charge' in this rule. The appellant refers to r. 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, hereinafter called the Punishment and Appeal Rules, This rule reads:

"(1) Without prejudice to the provisions of the Public Servants (Inquiries) Act, 1850, no order of dismissal, removal or reduction, shall be passed against a person to whom these rules are applicable, unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

(2) The grounds on which it is proposed to take such action, shall be reduced to the form of a definite charge or charges which shall be communicated in writing to the person charged and he shall be required within a reasonable time to state in writing whether he admits the truth of all, or any, of the charges, what explanation or defence, if any, he has to offer and whether he desires to be heard in person. If he so desires, or if the authority empowered to dismiss,

remove or reduce him so directs, an oral enquiry shall be held at which all evidence shall be heard as to such of the charges as are not admitted."

This rule comes into play only after a *prima facie* case is made out against a Government servant and not at the state of a preliminary investigation into accusations made against a Government servant. But it does not follow that suspension is not permissible till this stage of making a formal charge arrives. Rule 3.26(d) is of general application and therefore the expression 'charge of misconduct' in this rule is not to be interpreted narrowly as meaning 'the charges formally framed and communicated to the government servant concerned' with the intimation that a formal departmental enquiry had been initiated against him on those charges. The appellant's contention does not find any support, as urged, from the last portion of this rule which reads 'until the enquiry into the charge is concluded and a final order is passed thereon'. Of course, the enquiry would be into the charges of misconduct on account of which the Government servant has been suspended and the suspension will continue till a final order is passed on those charges. The requirements of the last portion of this rule do not in any way lead to the conclusion that the enquiry into the charges refers to a formal departmental enquiry into the charges framed and communicated to the Government servant in accordance with r. 7 of the Punishment and Appeal rules. We are of opinion that whenever any charge of misconduct is under enquiry by the Government, be it informally or formally, the Government is competent to suspend the Government servant and if the requirements of the case require to take action under r. 3.26(d).

It was contended that the appellant's suspension without calling him to explain the charges first, was bad as the proceedings to suspend him were of a quasi-judicial character and therefore necessitated the Government's obtaining his explanation to the charges of misconduct before passing the order of suspension. The order suspending the Government servant pending enquiry is partly an administrative order. What has been held to be quasi-judicial is the enquiry instituted against the Government servant on the charges of misconduct, an enquiry during

1963

S. Pratap Singh
v.
The State of Punjab

Raghubar Dayal, J.

which under the rules it is necessary to have an explanation of the Government servant to the charges and to have oral evidence, if any, recorded in his presence and then to come to a finding. None of these steps is necessary before suspending a Government servant pending enquiry. Such orders of suspension can be passed if the authority concerned, on getting a complaint of misconduct, considers that the alleged charge does not appear to be groundless, that it requires enquiry and that it is necessary to suspend the Government servant pending enquiry.

Explanation I to rule 2.2(b), Vol. II, 1959 rules, supports the view that there can be suspension of a Government servant even prior to the issue of charges of misconduct to him, the Explanation being,

> "Departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him, or, if the officer has been placed under suspension from an earlier date, on such date".

Bachhittar Singh's Case(1) is no authority for the contention that the initial order of suspension pending enquiry must be made after obtaining the explanation of the Government servant concerned. That question did not at all arise for consideration in this case.

In this connection we may also deal with another contention of the appellant that the 1941 or 1959 rules do not empower the Government to suspend a government servant pending an enquiry. It is contended that the suspension contemplated by the rules is the suspension which comes under r. 7.5, 1941 rules, or under rules 7.5 and 7.6 of the 1959 rules. These rules do not invest the Government with the power of suspension, but only provide either for certain periods during a Government servant's service to be deemed to be periods during which he was under suspension or during which he be placed under suspension in view of the various exigencies mentioned in those rules. No such formal rule is to be found in any of these rules. The power of suspending a Government servant is vested in the authority which appoints the Government servant in view of s. 16 of the General Clauses Act, 1897.

(1) A.I.R. 1963 S.C. 395.

The other substantial contention for the appellant in connection with the inapplicability of r. 3.26(d) to his case is that, under the 1941 rules which governed his service initially, he had a right to opt for retirement on superannuation and that therefore the 1959 rules could not adversely affect that right and empower the Governor to retain the appellant in service after the date of superannuation without the consent of the appellant.

Rule 1.6 of the 1959 rules provides that nothing in those rules shall operate to deprive any person of any right or privilege to which he is entitled by or under any law or by the terms of his agreement. Rule 5.28, Vol. II, 1941 rules reads:

> "A Government servant in Superior service who has attained the age of 55 years may, at his option, retire on a Superannuation pension."

The contention of the appellant is that this rule gives him the right to retire on superannuation pension on attaining the age of 55 years and that therefore he cannot be retained in service after he had attained that age without his consent, that he cannot be deprived of this right by the 1959 rules and that therefore r. 3.26(d) could not be applicable to him after he had attained the age of 55 years.

There is nothing corresponding to r. 5.28 of Vol. II of 1941 rules in Vol. II of the 1959 rules. It appears that r. 5.28 of the latter volume was cancelled. When the retirement of the appellant, as already held, is governed by the 1959 rules and not by the 1941 rules, the right, if any, given by the 1941 rules to the appellant to opt for retirement could not be said to be a right which comes within r. 1.6 of the 1959 rules as rule 1.6 preserves such rights to which the Government servant be entitled by or under any law or by the terms of his agreement. It contemplates such rights which the law in force gives to the Government servant at the time the 1959 rules are in force. When the 1941 rules do not govern him now, it cannot be said that he has a right to opt for retirement on attaining the age of 55.

Rule 5.28, aforesaid, is in Vol. II of the 1941 rules which embodies the rules relating to pensions and provident fund and therefore the proper interpretation of that rule would be that it provides for and permits the grant

1963

S. Pratap Singh
v.
The State of Punjab

Raghubar Dayal, J.

of superannuation to a government servant who has opted to retire after attaining the age of 55 years on being required by the Government, in the exercise of its powers under r. 3.26 of Volume I, to continue in service. This is clear from the sequence of rules in Volume II. Section 4 of Chapter V deals with superannuation pension. Its part I deals with conditions of grant. This part has got three rules 5.27, 5.28 and 5.29. The other part deals with procedure. Now, r. 5.27 provides that superannuation pension is granted to a Government servant in superior service entitled or compelled to retire at a particular age. This rule refers to the Government servant to whom superannuation pension is granted. Rule 5.28 follows this rule under the heading 'conditions of grant' and therefore is to be interpreted to mean that superannuation pension can be granted to a Government servant in superior service who is retired at his option after he has attained the age of 55 years.

Assuming however that the appellant had a right to retire on attaining the age of 55 years in view of this rule or r. 3.26(a), that right is subject to r. 3.26(d) in as far as this rule provides that no Government servant would be permitted to retire on his reaching the date of compulsory retirement if he be under suspension on a charge of misconduct.

It is also contended that r. 3.26(d) applies to those Government servants whose date of compulsory retirement, *i.e.,* the date on reaching which they could be retired or permitted to retire, precedes the date of superannuation on which date they must retire. There is nothing in this rule or in note no. 3 to r. 3.26 which should make us construe the expression 'date of compulsory retirement' to be the date on reaching which they can be retired or permitted to retire prior to the actual date of superannuation. No such rule was really necessary for such cases as it was not incumbent on the State to require the officers reaching such an age to retire. Requiring them to retire at that age was an option with the Government. The expression 'date of compulsory retirement' in r. 3.26(d) must really refer to the dates mentioned in the earlier clauses of r. 3.26 and they are those on which the Government servant attains the age of 55 years or any of the ages mentioned

in clauses (b) and (c) of that rule. Clause (b) provides that certain Government servants should be required to retire at the age of 60. Clause (c)(i) provides for the retirement of certain officers on reaching the age of 55 years and empowers the Government, however, to require them to retire on reaching the age of 50 years in certain circumstances. The expression 'required to retire' would certainly refer to these officers whose cases come within the previous clauses of r. 3.26 and may also be applicable to Government servants who may be required to retire under any other rule in particular circumstances. The width of the rule cannot clearly make the rule inapplicable to the cases covered by the earlier clauses of r. 3.26.

The expression 'permitted to retire', again, would refer to cases where the Government servant opts to retire in view of certain rules providing for his exercising such an option.

The following observations at p. 579 of the case reported as *The State of Bombay* v. *Saubhagchand M. Doshi*(1) do not support the contention of the appellant. They simply mean that the question under consideration in that case could arise in those circumstances, the observation being:

> "It should be added that questions of the above character could arise only when the rules fix both an age of superannuation and an age for compulsory retirement and the services of a civil servant are terminated between these two points of time."

The question raised in that case was whether the order of compulsory retirement amounted to an order of dismissal or removal or not.

We are therefore of opinion that the appellant had no absolute right to opt for retirement on his attaining the age of superannuation, that any such option was subject to r. 3.26(d) which applies to him and that his case comes under that rule as he was on the date of his compulsory retirement under suspension on charges of misconduct.

It is true that no question of Government retaining a Government servant in service on his attaining the age of 55 years arises if the officer had once retired on attaining that age. If the Government desires to have the advantage

(1) [1958] S.C.R. 571.

1963

S. Pratap Singh
v.
The State of Punjab

Raghubar Dayal, J.

of his services after he had retired, the only course open to the Government is to reemploy him. No such situation however arises in the present case when the impugned orders suspending the appellant, revoking his leave subsequent to that date and retaining him in service after the date of superannuation in view of r. 3.26(d) had been made prior to the date on which he was to attain the age of 55 years.

It has also been contended that r. 3.26(d) infringes the fundamental rights of the appellant as a citizen of India under Art. 19 and 23 of the Constitution. We do not agree. Rule 3.26(d) simply provides that the service which the appellant took up voluntarily and on conditions as be laid down by the relevant rules would continue in certain circumstances even though the Government servant has attained the age of superannuation. Further, any restriction the rule imposes on any alleged fundamental right under cls. (f) and (g) of Art. 19 is a reasonable restriction in the interests of the general public. The services to be rendered by the Government servant subsequent to such an age, in view of r. 3.26(d), is in no sense a service which can be equated with the expression 'begar' or 'forced labour' in Art. 23. The appellant is not forced to do any work. He remains under suspension and does no work. Even if it be assumed that the retention in service of the Government servant, in view of the provisions of r. 3.26(d), can come within the expression 'forced labour' this rule would be valid in view of Art. 23(2) which provides that nothing in that Article shall prevent the State from imposing compulsory service for public purposes. We are of opinion that such retention would be for a public purpose, as it is in the larger interests of the efficiency of the services that a Government servant should remain within the control of the Government so long as the departmental enquiry against him on a charge of misconduct is not concluded and final orders are not passed.

It was also contended that some of the charges framed against the appellant, if true, would constitute criminal offences and that therefore criminal prosecution should have been launched against him in place of the departmental proceedings. There is nothing in the rules or the general law which would support this contention. It is for the

Government to decide what action should be taken against the Government servant for certain misconduct. Such a discretion in the Government does not mean that the provision for the departmental enquiry on such charges of misconduct is in violation of the provisions of Art. 14. The service rules apply equally to all the members of the service *i.e.,* to all persons similarly placed and are not therefore discriminatory. The Government has the discretion in every case, considering the nature of the alleged misconduct and other circumstances, whether a criminal prosecution should be launched or not. The Government is also free to conduct departmental proceedings after the close of the criminal proceedings, if instituted. There is therefore nothing illegal in the Government instituting the departmental proceedings against the appellant.

Before dealing with the allegation about the impugned orders being made *mala fide,* we may deal with certain general points raised by the appellant.

A grievance has been made that Sardar Pratap Singh Kairon, the Chief Minister, was not made a party to the proceedings on the writ petition. The appellant did not implead him in the first instance. It was after the decision of this Court in *R. P. Kapur* v. *Sardar Pratap Singh Kairon*(1) that the appellant applied for the impleading of the Chief Minister as the respondent in the petition. That application was rejected by the High Court as no relief had been claimed against him. The order cannot be said to be wrong when the only ground mentioned for impleading the Chief Minister as a party was to make it incumbent on him to file an affidavit, which he was not legally obliged to, if he was not a party.

A number of affidavits sworn by Mrs. Sodhi, Pahwa, Yog Raj, Om Prakash, Surendra Singh Kairon and Kirpa Singh were filed on behalf of the respondent in the Court below. It is now contended that these affidavits should not have been taken into consideration when no reference to them has been made in the written statement filed on behalf of the respondent. No such objection seems to have been raised in the Court below. The allegations in the petition and the affidavit of the appellant with respect to matters concerning these persons were not accepted by the

(1) [1961] 2 S.C.R. 143.

1963

S. Pratap Singh
v.
The State of Punjab

Raghubar Dayal, J.

respondent. It was therefore not improper or irregular or illegal for the State to have secured these affidavits and to have filed them in Court. In fact, it should have secured affidavit from the Chief Minister, Mrs. Kairon, the Inspector-General of Prisons and the Vigilance Inspector about the allegations concerning them. There is therefore no force in this contention.

It has been contended that the allegations of facts made by the appellant in the petition being not specifically controverted in the written statement and being not denied by the persons most competent to deny them, should be taken to be established. The contention really refers to the allegations made against the Chief Minister and his wife and about certain matters in the tape recorded conversation the appellant had with the I.G. of Prison and the Vigilance Inspector. The appellant has filed a rendering of the conversation alleged to have taken place between him and these persons. These persons have not denied, by their own affidavits, that they did not have the alleged conversations with the appellant, even though the officers of the State, on the application of the State, were allowed to listen to the recorded tape conversation and to prepare their own tape records of the renderings of the tape recordings filed by the appellant in Court in order to enable the State to verify the appellant's allegation that the tape-recorded talks were between the appellant and the persons alleged. Absence of such affidavits can at best lead the Court to accept what was alleged to be stated by these persons in the conversations, but cannot be sufficient to establish what the person talking states to be the statements of other persons. The tape recorded conversation between the appellant and the other person talking with him can only be corroborative evidence of the statement of appellant that the other persons had made such and such statements, but cannot be direct or primary evidence that the third person had stated what the other speaker had told the appellant.

The High Court did not rely on the renderings of the tape recorded conversation in view of the fact that such tape recording can be tampered with. Tape recordings can be legal evidence by way of corroborating the statements of a person who deposes that the other speaker and

he carried on that conversation or even of the statement of a person who may depose that he over-heard the conversation between the two persons and what they actually stated had been tape recorded. Weight to be given to such evidence will depend on the other factors which may be established in a particular case. It cannot be held, and it has not been so held by the Court below, that the record of the conversation on a tape record is not admissible in evidence for any purpose and therefore we need not say anything more about it.

The appellant did not give full details of his allegations with respect to the reasons for the Chief Minister's being displeased with him. He made certain statements in indefinite terms in the petition. He did not make them more specific. His explanation for this is that he did so as there had been no specific denial of the general allegations by the persons concerned. This is no good explanation for his not making definite assertions of fact which could be helpful to the Court in determining whether those facts would have constituted good reasons for the Chief Minister's displeasure and for his acting *malafide* in getting the various orders issued by the Governor. It was really for the appellant, in the first instance, to make definite allegations in his petition. If he makes indefinite allegations, there is nothing for the other party or the persons concerned to deny. They can take advantage of the vagueness of the appellant's own allegations. Their reticence in that regard cannot give an advantage to the appellant when he himself is in default in not making definite allegations.

We now deal with the allegation that the Chief Minister bore ill-will against the appellant for certain reasons and that the impugned orders were made *malafide*.

The Chief Minister's son, Surendra Singh Kairon, contracted a disease for which he had to be operated in April 1960. The Chief Minister asked the appellant to perform the operation secretly, outside Jullunder. The appellant did so. Surendra, however, before he was completely cured, left Jullunder for a few days. This annoyed his mother who conveyed to the appellant that the Chief Minister was indignant at the appellant's inability to ensure that the boy did not leave his place. This incident, it is alleged, culminated in acrimony and hostility on the part of the Chief

1963

S. Pratap Singh
v.
The State of Punjab

Raghubar Dayal, J.

Minister towards the appellant. There is no allegation that the boy suffered on account of his leaving the appellant's house prior to his being cured completely. There is nothing in the record of the alleged conversation between the appellant and the wife of the Chief Minister, tape recorded talks nos. 6 and 2 in April and May respectively, to show that the Chief Minister had asked the appellant to perform the operation. Any statement attributed to the Chief Minister, by his wife, even if the talk was with her, is not evidence of what the Chief Minister had stated, as Sardarni Pratap Singh Kairon has not been examined. Surendra has denied, in his affidavit, the appellant's performing any operation on him at the relevant time. In these circumstances, it is not possible to hold that the Chief Minister did ask such a favour from the appellant and that even if the appellant's allegation is correct, he felt so annoyed with the appellant at Surendra's leaving Jullunder for a few days, be it from the house of the appellant or from the Circuit House, as to break all such friendship with the appellant as has been alleged by him and swing over to the other extreme and harbour such grudge against him as to abuse his position as the Chief Minister, get unjustified enquiries launched against him and get the impugned orders passed.

Another allegation is that the Chief Minister himself and his family members, made numerous recommendations asking for undue favours pertaining to the sphere of the appellant's duties and that when they went beyond the limits of endurance, the appellant expressed his inability to comply with some of the extremely unreasonable demands. In support of this contention, the appellant filed documents of the B-series, nineteen in number. None of these documents, by itself, would show that the appellant was asked to act in a manner which may be said to be not in keeping with the proper discharge of his official duties. The contents, by themselves, show that the writers, who included the Chief Minister, his sons Surendra and Girendra and his brother Jaswant Singh, recommended to the appellant certain persons for treatment, for admission in the hospital or for grant of medical certificates. It is not to be presumed that untrue certificates were required to be issued. The appellant does not state in what manner he

acted improperly and why he did so. The mere fact that he was a friend of the Chief Minister would not justify it. He held a responsible position and is expected to have done his duty. In case he did not do his duty and thus suffered from a weakness of character, his conduct can be said to be due to his desire to remain in good grace with the Chief Minister and thus gain some advantage in the service, be it promotion, posting at a good station or protection from any adverse action in case he acted improperly in the discharge of his official duties. There is nothing in the petition to indicate how and when the Chief Minister and the appellant became friends. The relationship between the Chief Minister and an efficient public servant may be a close one, but would not amount to friendship and therefore the explanation that the appellant showed undue favours for some time to persons recommended by the Chief Minister and his relations merely on account of friendship does not appear good and, even if the appellant's allegation be correct, his showing undue favours would not antagonize the Chief Minister. The appellant has not shown which recommendations he did not comply with and when such occasions arose. Therefore this allegation does not establish the Chief Minister's bearing a grudge against the appellant.

The other reason for the Chief Minister's grievance is said to be the appellant's ceasing to comply with the unreasonable requests of the family members of the Chief Minister for medicines and other expensive articles. He does not say which requests and when he did not comply with. So long as he complied with those requests, they would put him in good grace with the Chief Minister and his relations. It is however denied that he did supply such things. It appears from certain postal receipts filed by the appellant that certain parcels were sent to Mrs. Pratap Singh Karion in July and October 1957, March and September 1958 and March 1959. The receipts do not show that these parcels contained medicines. Tape recorded talks nos. 1, 3, and 4 do refer to requests for and supplies of medicines by the appellant. It is also alleged that among the expensive articles supplied were two Singer sewing machines. Cash memos for the purchase of two Singer sewing machines by Sardar Bahadur Bagh Singh, father-in-

1963

S. Pratap Singh
v.
The State of Punjab

Raghubar Dayal, J.

law of the appellant in July 1959 and October 1959, have been filed. In July 1959, a wooden box was sent to Mrs. Kairon through Pahwa who was then the Traffic Manager of the Punjab Roadways at Amritsar. Om Prakash brought that box from the appellant's place to Pahwa. Both these persons, Om Prakash and Pahwa, have filed affidavits. They describe the box to be of such a size that it could not possibly contain the Singer sewing machine. Om Prakash however had stated in the receipt, Annexure C. 9, that he had received a box bearing label 'Singer Sewing Machine' from Dr. Partap Singh. Tape recorded talk no. 3 in August 1959 records Mrs. Kairon's conversation about receiving a machine and not liking it on account of its colour and the appellant's telling her that they would deduct the money in certain contingencies. The State has not filed any affidavit by her in denial of these statements. The conversation shows that the appellant supplied a Singer sewing machine to Mrs. Kairon and that some deduction could be made in the price in certain contingency. There is no reason to disbelieve the appellant's statement that he had supplied a Singer sewing machine and medicines to her. These supplies by the appellant would however ingratiate him with the Chief Minister. There is nothing on the record to indicate which requests for what medicines and articles and when were refused by the appellant and thus gave cause for grievance to the Chief Minister.

Another reason for the Chief Minister's harbouring a grievance against the appellant is said to have arisen in April 1960 on account of the appellant's asking the Chief Minister's friend, Kirpa Singh, whom he had kept as a guest for about 7 months, to leave the appellant's house. Kirpa Singh was the Manager of National Motors at Jullunder. It is alleged in the petition that this firm was either directly or indirectly owned by Surendra Singh Kairon or a close relation of his. This allegation is very vague. Both Kirpa Singh and Surendra Singh have denied Surendra Singh's having any concern with the National Motors at Jullunder. Kirpa Singh did stay at the appellant's house in the alleged period. His letter Exhibit D-1, however does not indicate that he felt annoyed at leaving the appellant's house where he had stayed from September

1959 to the end of March 1960. In fact, Kirpa Singh, by his letter, expressed his thanks to the appellant. There could therefore be no reason for the Chief Minister to feel annoyed and bear grudge against the appellant on account of Kirpa Singh not staying as a guest of the appellant from April 1960, even though Kirpa Singh was a friend of the Chief Minister and was kept as guest by the appellant at the instance of Surendra Singh, as appears from the tape recorded talk no. 15.

The other two reasons for the Chief Minister's being aggrieved with the appellant relate to what happened subsequent to April 1960. It is alleged that in September 1960, the Chief Minister sent a message through the Home Secretary, Punjab, to the effect that he had been over liberal towards the Akali prisoners in the District Jail. It is stated in the written statement filed by the respondent that the District Magistrate, Jullunder, made such a complaint to the Home Secretary, who happened to be at Jullunder and that the Home Secretary conveyed it to the appellant at a meeting at which the Inspector-General of Prisons and the Collector were also present. The matter was closed as a result of what was talked about at the meeting. Reference has been made in this connection to the tape recorded conversation the appellant had with the Inspector General of Prisons in November 1960. It appears from this conversation that exaggerated information had reached the Chief Minister and made him send the message and that he was satisfied when the I.G. of Prisons explained the matter to him. A Chief Minister's sending a message to an officer about certain complaint received against him cannot be taken to indicate his ill-will against that officer. He is bound to do so as a part of his duty.

The next reason is said to be that the Chief Minister had used the appellant extensively in the Karnal Murder Case, off the record, when it was the subject matter of an appeal. The Sessions Judge acquitted the accused in that case in November 1959 and the High Court dismissed the Government appeal in May 1960. The appellant did his best to help the prosecution with instructions in connection with the medico-legal matters in the case and stated to the Chief Minister that the outcome of the case would

1963

S. Pratap Singh
v.
The State of Punjab

Raghubar Dayal, J.

be favourable. This is borne out from tape recorded talk no. 7 recorded in April 1960. It is alleged that the dismissal of the appeal by the High Court and the ultimate dismissal of the Government petition for special leave to the Supreme Court in October 1960 displeased the Chief Minister who expressed his displeasure to the appellant. It can be imagined that the Chief Minister in these circumstances would sarcastically speak to the appellant about the strong assurances he had given about the outcome of the case, but it is difficult to hold that that would make the Chief Minister hostile to the appellant despite the hardwork he had done, at his request, in helping the prosecution with the medico-legal aspect of the case. It is significant to note that the appellant does not allege that the Chief Minister expressed his displeasure to him in May 1960, shortly after the High Court dismissed the State Appeal.

Another cause for the displeasure of the Chief Minister is said to be the appellant's inability to comply with the illegitimate contents of the instructions conveyed to him by the Chief Minister in December 1956 in connection with Dr. Dhillon's accompanying the Chief Minister for a number of days as medical attendant. The nature of those instructions has not been disclosed. What part the appellant played in the alleged subsequent developments with the Accountant General, Punjab, and which were unpalatable to the Chief Minister, has not been indicated. The incident took place in December 1957 and surely, even if true, does not appear to have affected the alleged friendly relations between the Chief Minister and the appellant up to April 1960.

We have considered all the reasons set out by the appellant in his petition for the Chief Minister's bearing grudge against him from May 1960 onward and are of opinion that they, singly or cumulatively, fail to establish that the Chief Minister had any grievance against the appellant.

The earliest definite incident which, according to the appellant, annoyed the Chief Minister, took place in the beginning of April 1960, as Kirpa Singh was made to leave his house at the end of March 1960. We have held that in view of Kirpa Singh's letter of thanks to the appellant, there

could have been no cause for the Chief Minister to feel displeased with the appellant. This inference finds support from the fact that the Chief Minister did not do anything against the appellant soon after it, but on the other hand, entrusted the appellant to perform an important operation secretly on his son Surendra in the end of April 1960, which could be only if he entertained good relations with the appellant till then.

We have also held that the alleged inability of the appellant to keep Surendra Singh at his place subsequent to the appellant's performing the operation on him could not have displeased the Chief Minister as no ill-effect followed. This view, again, finds support from the fact that the Chief Minister did nothing against the appellant till the end of October when an enquiry was instituted against the appellant. The alleged incident about Surendra's leaving Jullunder for a few days before he fully recovered did not therefore lead to any animosity between the Chief Minister and the appellant.

The High Court, Punjab, dismissed the State appeal in the Karnal Murder case in May 1960. The appellant is said to have helped the prosecution at the appellate stage. The Chief Minister could have had cause for dissatisfaction but, as we have mentioned earlier, the dismissal of the appeal could not have given rise to such bad feeling in the Chief Minister against the appellant as to lead to the transfer of the appellant in October and to institute the enquiry against him.

The recorded conversation between the appellant and the I.G. of Prisons in November 1960 tends to indicate that the appellant's relations with the Chief Minister could not have been bad in November 1960 as he had sought the advice of the I.G. of Prisons about his reporting to the Government about the attitude of the District Magistrate at that meeting. If the relations between the Chief Minister and the appellant were as bad as we are asked to believe, such an idea in connection with the attitude of the District Magistrate, even if it was improper, could not have occurred to the appellant at that time when the I.G. of Prisons himself had told him : 'In my opinion that matter was hushed up'.

1963

S. Pratap Singh
v.
The State of Punjab

Raghubar Dayal, J.

The appellant has, however, also urged certain matters as indicating the malice borne by the Chief Minister towards him and thus indirectly giving support to his allegation that the Chief Minister had personal grievances against him.

The appellant's transfer from Jullunder to Amritsar was ordered in December 1960. Jullunder, according to the appellant's statement in Court, is a coveted station for Civil Surgeons. He had over-stayed there the normal period of three years. His transfer cannot be attributed to malice of the Chief Minister, when an enquiry had been instituted against him in connection with a complaint regarding the discharge of his duties. Transfer, in such circumstances, was the most natural order to be passed by the Head of a Department. It may be that for the convenience of its officers transfers are usually ordered in March and April and are not ordered shortly before the period of retirement. But any transfer outside that period or sometime before retirement, for administrative reasons, cannot be said to be a transfer ordered *mala fide*.

The appellant's brother-in-law, who was officiating in the Provincial Civil Service, Executive Branch, was reverted to the lower cadre on November 22, 1960, the reversion being between the institution of a departmental enquiry against the appellant and the orders of his transfer. This is said to be evidence of the general ill-will which the Chief Minister bore against the appellant. It is alleged in the written statement that the reversion was on account of the unsatisfactory conduct and work of the appellant's brother. We cannot take this reversion to be *mala fide* as there is nothing on the record that it has been so held in any proceedings which could have possibly been taken by the appellant's brother-in-law against his reversion. Subsequent cancellation of the reversion orders on his representation, as stated in Court by the appellant, does not, by itself point to reversion being made *mala fide*.

The appellant preferred to take leave preparatory to retirement and, as already stated, such leave was sanctioned to him. He proceeded on leave some time in December 1960. Subsequently, things happened which could have given cause to the Chief Minister for feeling aggrieved with the appellant. The Blitz of January 14, 1961 pub-

lished an article under the caption 'Punjab's latest scandal: The sewing machine of Kairon family'. According to this article, the Civil Surgeon paid the price for the sewing machine and supplied it to the Chief Minister's wife. It also mentioned that the Roadways Official transported it. It described the appellant to be the henchman of the Chief Minister and a handyman for his family members. It stated that the Civil Surgeon is said to have despatched several medicine parcels to the Chief Minister's wife by registered post and that he was asked to supply them out of the hospital stock. It referred to the Chief Minister's son having a garage in Jullunder and to the Boarding of the Manager of the Garage with the Civil Surgeon. It also mentioned about the recommendatory letters from the Chief Minister's sons, sister-in-law and brother to the Doctor. It referred to Dr. Dhillon's affair. Naturally, the Chief Minister could have taken this article to be inspired by the appellant and, more so when the appellant's wife published a letter in the Blitz dated March 18, 1961, practically admitting what had been alleged in that article except such matters which went against her husband. She stated that she sent parcels of medicines by registered post and other means to the wife of the Chief Minister and that the Garage Manager stayed with them as required by the Chief Minister's wife.

Between January and March, several things happened which indicated to the appellant that the Government was taking action against him. On January 17, 1961, the appellant received a letter dated January 13, 1961, from the Inspector of Vigilance, District Jullunder, enquiring from him about the place where and the date when he could be contacted for ascertaining his view point on points relevant to the enquiry ordered by the Punjab Government. This was in connection with the enquiry instituted on October 29, 1960. It is alleged for the appellant that the Chief Minister could have seen the copy of the Blitz dated January 14 at Delhi on January 13, 1961 and that he then started vindictive proceedings against the petitioner and used the Government machinery in a malicious manner to satisfy his personal malice and vendetta. The implication is that it was on the Chief Minister's knowing of the article published in the Blitz dated January 14 that he directed

1963

S. Pratap Singh
v.
The State of Punjab

Raghubar Dayal, J.

the Vigilance Inspector to issue the letter of January 13 to the appellant for ascertaining the place and the date when he could interrogate him in connection with the enquiry. This is a far-fetched idea. The enquiry had been in progress since October 29 and it must have been in due course that the Vigilance Officer wrote the letter dated January 13 to the appellant.

Whatever views the Vigilance Inspector expressed about the various charges framed against the appellant in the tape-recorded talk no. 16 on February 13, 1961, even if they be his real views in the matter, is no index of the fact that the superior officers who had investigated the case had formed a similar opinion and that the action taken by the Government a few months later in formally framing charges with respect to those matters was actuated by malice. The letter, Annexure J, dated June 3, 1961 states that the evidence brought on record was sufficiently strong to warrant serious action against him. Any views expressed by the Vigilance Inspector who had really no business to express them when he was deputed to get the explanation or the appellant's version about certain allegations against him, is not sufficient, in our opinion, to look at this assertion in the letter with suspicion. In fact, if the Chief Minister had started the enquiry in October on account of malice and had prompted the Vigilance Inspector on January 13 as a result of the publication of an article in the Blitz of January 15, 1961, presuming that he had seen that copy of the Blitz at Delhi on January 13, the Chief Minister could have very well seen to the early submission of the police report making out a case against the appellant and would have taken action against the appellant much earlier than June 3, 1961, when special steps had to be taken to see that necessary legal action against the appellant is complete before his date of retirement on June 16, 1961. Surely, the Chief Minister could have easily managed these matters if he were actuated by malice and had been taking keen personal interest simply with a view to wreak vengeance against the appellant who had the audacity to act against his wishes even though he had submitted to them for an appreciable time.

In February 1961, the appellant received a copy of the remarks entered in his annual confidential file for the

year April 1, 1959, to March 31, 1960: 'Professionally he is reported to be somewhat about average. Yet, there has been persistent complaints about his avarice and lack of integrity'. The appellant did not appear to have taken any action in connection with the adverse remarks communicated to him till June 29, 1961, except in so far that he asked the Director of Health Services about the period during which a representation against such remarks could be made. In his representation dated June 29, 1961, which was submitted beyond the usual period for making representation, the appellant said:

> "I am constrained to point out that these observations by Shri Kairon, Chief Minister (Govt. in the Health Deptt.) do not reflect an honest opinion in the context of certain facts on record, a few of which are outlined below."

and referred to the various matters stated by him in the petition. The written statement shows that these remarks were not made by the Chief Minister but were made by the Secretary in the Health Department. We do not know when these remarks were made. The mere fact that they were communicated in February 1961 does not mean that they were recorded near about that date. Annual remarks, in the nature of things, must be made after some appreciable time from the close of the year as they are based on the receipt of the remarks from the departmental heads, who take their own time in submitting such remarks. Even if they were made near about February 1961, that would not show that they were made maliciously on account of the Chief Minister's ill-will as, by that time, the various complaints against the appellant which had come to the notice of the enquiring officer, would have also come to the notice of the Government. The complaints, according to the charge-sheet framed against the appellant, mostly relate to the years 1959 and 1960.

The tape-recorded conversations between the appellant and the Chief Minister and his wife were played at a Press Conference on March 29, 1961, at Chandigarh. This led to some move for an adjournment motion in the Punjab Legislative Assembly on March 30.

In April 1961, the appellant's wife sent a pamphlet 'Acts of corruption by Shri Partap Sing Kairon and his

1963

S. Pratap Singh v. *The State of Punjab*

Raghubar Dayal, J.

family members' to the Members of Parliament and other leading persons throughout the country. This conduct of the appellant's wife would have again furnished cause for grievance to the Chief Minister.

The question, however, is whether these acts of the appellant and his wife giving cause for grievance to the Chief Minister between January and April 1961 can be said to have led the Government to take the steps against the appellant with regard to his suspension, revocation of leave, extension of service and institution of a formal departmental enquiry out of malice or that such steps were taken against him in due course. We are of opinion that the steps cannot be said to be taken *mala fide* merely because the appellant and his wife acted in a manner which could undoubtedly provide cause for grievance to the Chief Minister. Nothing is on record to indicate why the appellant and his wife felt so prompted as to have an inspired article printed in the Blitz of January 14 and to have the appellant's wife's letter published in the Blitz in March 1961 and her pamphlets distributed all over the country. Surely, the appellant and his wife cannot be said to have done this with the noble object of bringing the misdeeds of the Chief Minister of Punjab to public notice and thereby to cause a change for the better in the administration of the affairs in the Punjab. The appellant was not a free man. He was still in service, though on leave preparatory to retirement. He was to retire in June 1961 and therefore he had to observe the usual discipline enjoined on a public servant. His wife too was not to act in a manner in which a public servant's wife is not expected to act. It cannot be believed that the appellant did not know what his wife was doing. The conclusion is irresistable that the appellant and his wife rushed to the Press so prematurely, even if they could be said to be actuated with laudable motives of bringing improvement in the administration of the State, to create a shield for the appellant in case the police investigation that was in progress against him culminated in the formulation of formal charges against him and in the instituting of a formal departmental enquiry against him. The design was on the part of the appellant and cannot be said to be on the part of the Chief Minister, who can be responsible

for various orders of Government as the Minister-in-charge of the department and as head of the Administration.

It has also been contended in connection with the alleged *mala fides* that in view of r. 8.19 of the 1941 rules, the Government should have refused the leave in December 1960 if genuine complaints had been made against the appellant and investigation was proceeding on them. The leave was to be governed by the 1959 rules and r. 8.19 in those rules did not make it incumbent on the Government to refuse leave to the appellant in December 1960. The rule is :

> "Leave shall not be granted to a Government servant whom a competent authority has decided to dismiss, remove or compulsorily retire from Government service."

Government had not arrived at any such decision and therefore could not have and was not bound to refuse leave by resorting to r. 8.19. Even the rule as it stood in the 1941 rules could not have justified the Government resorting to it for refusing leave to the appellant. That rule was:

> "Leave should not be granted to a Government servant who is to be dismissed or removed from service for misconduct or general inefficiency, if such leave will have the effect of postponing the date of dismissal or removal, or to a Government servant whose conduct is at the time forming, or is in the near future, likely to form, the subject matter of departmental enquiry."

The rule was not mandatory. It was discretionary with the Government to grant leave or not. The police was investigating into the complaint against the appellant in December 1960 and it would have been too much for the Government to form a definite opinion about the action to be taken against the appellant then.

The grant of leave to the appellant in 1960 does not therefore indicate that the Government had not received any complaint against him by the time it granted him leave and that the Government's subsequent action against the appellant was *mala fide*.

Another submission for the appellant to establish his case of *mala fides* against the respondent is that the Government having sanctioned him leave, need not have taken recourse to suspending him and revoking his leave, but

1963

Pratap Singh
v.
The State of Punjab

Raghubar Dayal, J.

could have taken adequate action against the appellant under r. 2.2(b), Vol. II, 1941 rules, if he was found guilty of grave misconduct as a result of the departmental proceedings the Government was to institute against him. The mere fact that Government took one type of action open to them and not the other, is no ground to hold the Government action *mala fide*. Further, resort to r. 2.2(b) could have been taken only if the appellant was found guilty of grave misconduct and it would have been always a debatable point whether the charges made out against him established grave misconduct or simple misconduct. Action under that rule can be taken only in limited circumstances.

We are therefore of opinion that it is not established that the impugned orders were made by the Governor not with the ostensible object of a proper departmental enquiry against the appellant with respect to the complaints received against him, complaints found to have substance by the police on investigation but were made with the ulterior purpose of causing harassment and loss of reputation to the appellant as he had been instrumental in making public allegations tending to bring the Chief Minister of the State into disrepute.

We therefore dismiss the appeal.

BY COURT: In view of the opinion of the majority, the appeal is allowed. There will be no order as to costs here and in the High Court.

Appeal allowed.