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Bombay**

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**SooperKanoon Citation :** [sooperkanoon.com/346106](http://sooperkanoon.com/346106)

**Court :** Mumbai

**Decided On :** Apr-25-1958

**Reported in :** (1958)60BOMLR1302; (1959)ILLJ107Bom

**Judge :** Chagla, C.J. and ;S.T. Desai, J.

**Acts :** [Constitution of India](#) - Articles 309, 310, 311 and 313; Indian Railway  
Establishment Code - Rule 143

**Appeal No. :** First Appeal No. 769 of 1955

**Appellant :** S. Framji

**Respondent :** Union of India Represented by General Manager, Western Rly.,  
Bombay

**Advocate for Def. :** D.S. Parikh and ;M.N. Majumdar, Advs.

**Advocate for Pet/Ap. :** C.N. Daji, ;Vakil Dadabhow and ;Bharucha, Advs.

**Judgement :**

Chagla, C.J.

(1) Arather interesting, and by no means easy, Constitutional question arises in this appeal. The plaintiff, whose suit was dismissed by the learned City Civil Court

Judge on a preliminary issue, was a guard in the North Western Railway in Grade I and he was appointed on 24-4-1929, being confirmed on 30-1-1930. Then for a short time he acted as Grade II guard and he was made permanent in that Grade in 1944. On partition he opted for India and he served in the B. B and C. I. Railway as it existed in 1947. On 31-1-1950 his post in the North Western Railway was equated to a Grade C post and he filed this suit stating that the order passed on 31-1-1950 ordering him to work as a C Grade guard was invalid. He also sought a declaration that he was entitled to rank as a B Grade guard from the date when he was absorbed as a guard in the B. B. and C. I. Railway, and he also claimed a declaration that he was entitled to rank in seniority as a guard and to receive promotions, pay, confirmation, allowance, contribution in the Provident Fund, etc. on the length of his service as a guard on the North Western Railway commencing from 29-4-1929, and he wanted an order that the various emoluments to which he would be entitled on his being treated as a Grade B guard should be paid to him. The suit was filed against the Union of India represented by the General Manager, Western Railway, in which the B. B. and C. I. Railway had merged after Independence, and the question that arises is whether the plaintiff has any cause of action against the Union of India.

(2) The question may be posed in this way. Can a servant of the State sue the State in respect of any condition of service relating to his employment? TO put the question in different way, would it be correct to say that the statutory rules framed by the Railway conferred any right upon a Government servant, which right he can assert and enforce in a Court of law Or, again to put the same questioning a different language, are the rules framed by the Railway Authority, which are undoubtedly statutory rules, mere rules of guidance and administrative rules, or do they constitute a contract between the Union of India and its employee? The case of the plaintiff is that under the Indian Railway Establishment Code, which is a statutory Code, he has the right to be posted as a Grade B guard, that his right has been infringed, and he is entitled to come to a Civil Court against the Union of India to enforce his right.

(3) Turning to the Constitution, Part XIV of the Constitution deals with services under the Union and the States, and Article 310 provides that every person who is

a member of the defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President. The latter part of that Article, with which we are not concerned, deals with members of the civil service of a State. As will be noticed, Article 310 is made subject to any provision expressly made in the Constitution itself. That is the only exception which the Constitution has permitted to that Article. Unless, therefore, we find a specific provision in some part of the Constitution giving to a Government servant a tenure different from the tenure provided for in Article 310, every member of the civil service holds his office during the pleasure of the President. Those statutory exceptions in the case of Judges of the High Court and the Supreme Court, the Accountant General and certain other high dignitaries of the State whose tenure of office is a fixed tenure and who are not holding their office at the pleasure of the President. Now, the expression 'holding office during the pleasure of the President' is not a new expression introduced by the Constitution. It is an expression well known to the English Common Law. Under the English Common Law, every servant in England holds his office during the pleasure of the Crown. One view of Article 310 is that it only deals with the tenure of office and all that it provides is that the President can dismiss and civil servant at pleasure. The other view, which is a possible view and which has been taken in England, is that when a Government servant holds office at the pleasure of the King or the President, it connotes not merely that his services are terminable at the pleasure of the King or the President, but further that the services under Government is not a creature of contract and cannot be regulated by terms of a contract, that the relationship between a Government servant and Government is not contractual, and that no term of service can be made justiciable, nor can a Government servant assert any right relating to his service in a Court of Law. Article 311 confers certain Constitutional rights upon a civil servant and undoubtedly a breach or infringement of any of the statutory rights afforded to a civil servant under Article 311 confers a right upon him and he can come to Court and complain of the breach or infringement. There is no difficulty so far as that position is concerned. But the difficulty so far as that position is concerned. But the difficulty arises when one has to consider whether a civil servant has any rights other than the rights conferred by Article 311, and in this

conniption reliance is placed on Articles 309 and 313. Article 309 deals with the power of the appropriate Legislature to regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. This is a power conferred upon the Legislature to be exercised after the Constitution came into force, and the proviso makes it competent for the President or such person as he may direct to make rules regulating the recruitment and the conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature. And Article 313 keeps in force all laws immediately before the commencement of the Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution; and it is not disputed that the Indian Railway Establishment Code is a law within the meaning of Article 313 which was in force immediately before the commencement of the Constitution.

(4) Now, the question is this. Does a breach or an infringement of any of the rules which are kept in force under Art. 313 and which governs the conditions of service, confer a right upon a civil servant, which right he can assert in a Court of law? In other words, he has civil servant a right to come to Court not merely under Art. 311 but also if there is an infringement of nay of his conditions of service by the Union Government? In this very case, the plaintiff is not coming to court under Art. 311. His case is that there is an infringement of the provisions of the Indian Railway Establishment Code and that gave him the the right to come to Court. What is pointed out is that although with regard to tenure of service no complaint can be made except as provided under Art. 311, neither Art. 310 nor Art. 311 prevent s a civil servant from claiming his right under the relevant rules if his right is denied to him. It is also said that if the Constitution making authority has enacted Arts. 309 and 313, it would be erroneous to suggest that they were enacted without any intention to confer any right upon the Government servant who was affected by infringement of the rules or the law which those Articles contemplate. Now, if we take the wider view of the doctrine of a civil servant holding office during the pleasure of the President, then it is clear that the conditions of service contemplated by Arts. 309 and 313 cannot constitute a contract between the President and the civil servant and the breach of any of these conditions of service

would not confer any right upon the servant to approach a Court of law for the enforcement of his right. In other words, altogether the conditions of service may not be embodied in statutory rules of laws, they would not be enforceable conditions. But if we take the narrower view of this doctrine of a civil servant holding office during the pleasure of the President and hold that Article 310 deals only with tenure, even so before a civil servant could enforce any of the terms of the conditions of service embodied in statutory rules, it must be established that the statutory rules embodying the conditions of service constitute a contract between the President of India and the civil servant. The mere fact that there are rules embodied in the Railway Code which have a statutory force does not and cannot lead to the necessary conclusion that those rules constitute a contract between the President and the civil servant. As we shall presently point out, and as has been held by the Privy Council very clearly, you may have rules relating to conditions of service which are merely rules of guidance, which are administrative rules, and which may even constitute a solemn and statutory assurance to the civil servants that Government would behave in a particular manner or that the Government will act according to the rules passed and which affect the conditions of service. But neither rules of guidance nor administrative rules nor an assurance however solemn and even given in a statute can possibly be a substitute for a contract between the master and the servant, and therefore, really, without deciding the broader doctrine of a civil servant holding office during the pleasure of the President, we must confine ourselves in this appeal to the rather narrow question as to whether the provisions of the Railway Code constitute a contract between the civil servant and the Union Government.

(5) Now, Arts. 309 and 313 found a place, though perhaps not in the same language, in the corresponding provisions of the Government of India Act. We had in S. 240 the doctrine of a civil servant holding office during His Majesty's pleasure set out, we had then the safeguards of Art. 311 embodied in that section, and in S. 241 we had the provisions with regard to rules being made to regulate conditions of service. The question of the legal effect of these rules which were statutory rules and were provided for by S. 241 of the Government of India Act came in for consideration by the Primary Council in Venkata Rao v. Secy. of State, . The case of Venkata Rao, who was the appellant before the Privy Council, was that the

statute gave him a right enforceable by action to hold his office in accordance with the rules and that he could only be dismissed as provided by the rules and in accordance with the procedure prescribed thereby. In the first place the Privy Council considered the two leading English cases which according to the Privy Council correctly laid down the law in these matters. One was the case of *Shenton v. Smith* 1895 AC 229, and the other was *Gould v. Stuart*, 1896 AC 575. In the first case Lord Hobhouse delivering the judgment of the Privy Council laid down that

'unless in special cases where it is otherwise provided, servants of the Crown hold their offices during the pleasure of the Crown; not by virtue of any special prerogative of the Crown, but because such are the terms of their engagement, as is well understood throughout the public service. If any public servant considers that he has been dismissed unjustly, his remedy is not by a law-suit, but by an appeal of an official or political kind..... As for the regulations, their Lordships again agree with Stone J. that they are merely directions given by the Crown to the Governments of Crown Colonies for general guidance, and that they do not constitute a contract between the Crown and its servants.'

In the latter case the Privy Council construed the provisions of the New South Wales Civil Service Act. 1884, as containing express provisions which were inconsistent with importing into the contract of service the term that the Crown may put an end to it at its pleasure. The question that the Privy Council asked itself in *Venkata Rao's case*, was whether the case fell in the general category defined by *Shenton's case* 1895 AC 229 or the more exceptional category defined by *Gould's case* 1896 AC 575, and the Privy Council in a pregnant sentence at p. 704 (of Bom LR): (at p. 34 of AIR) point out that S. 96B in express terms stated that office is held during pleasure. 'There is therefore no need for the implication of this term and no room for its exclusion.'

(6) Therefore, whatever might be the position in England, where there is no statutory provision or even a constitutional provision as we have in India now, *Gould's case* 1896 AC 575 can have no force in India under the Constitution because under Art. 310 there is an express provision that the office of a civil servant is during the pleasure of the President and the only exception that can be

made to that doctrine is, as already pointed out, by an express provisions in the Constitution itself. This view was taken by the Privy Council of the provisions of S. 96B, which would also apply to the provisions of S. 240 of the Government of India Act, and would apply with equal force to the provisions of Art. 310 of the Constitution. The Privy Council also rejects in its judgment the limited doctrine of service being held at pleasure. This is what their Lordships say :

'The argument for a limited and special kind of employment during pleasure but with an added contractual term that the rules are to be observed is at once too artificial and too far-reaching to commend itself for acceptance. The rules are manifold in number and most minute in particularly and are all capable of change. Counsel for the appellant nevertheless contended with most logical consistency that on the appellant's contention an action would lie for any breach of any of these rules, as for example of the rules as to leave and pensions and very many other matters. Inconvenience (the Privy Council emphasised) is not a final consideration in the matter of construction but it is at least worthy of consideration and it can hardly be doubted that the suggested procedure of control by Courts managing its services would cause not merely inconvenience but confusion.'

And the Privy Council says that that was a consideration which seemed to their Lordships to be of the utmost weight. If the courts interfering in the working of a Government department could cause inconvenience and confusion in the year 1936, we shudder to think what the position would be in 1958 if the Courts were to regulate and control the working of the much more complex and complicated administration which is now in force in our country. The Privy Council points out that S. 96B and the rules make careful provision for redress of grievances by administrative process and that the terms of the section contain a statutory and solemn assurance that the tenure of office though at pleasure will not be subject to capricious or arbitrary action but would be regulated by rule.

(7) The same principle was emphasised by the Privy Council in an earlier judgment which is reported in *R. T. Rangachari v. Secy. of State*, , and the argument that was urged at the Bar and which was rejected by the Privy Council was that by the terms of S. 96B of the Act of 1919, which in a modified form

correspond to S. 240 of the Act of 1935, persons in the civil service of the Crown in India held office not simply at pleasure but on the terms set out both in the section and in all the rules made thereunder including the pensions rules. Therefore, there can be no doubt that if the Government of India Act was in force and we had to consider the provisions of Ss. 240 and 241 the present suit would not be maintainable. Mr. Daji concedes that in view of this clear and emphatic pronouncement by the Privy Council, it would not have been open to the plaintiff to agitate this question of infringement of the rules by an action in a Court of law.

(8) The question then is : Is there anything in our Constitution which has altered the clear position in law which obtained under the Government of India Act of 1935? We must indeed find clear and unequivocal language in the Constitution before we can come to the conclusion that so radical a change has been brought about in the relation between civil services and the Government that the Constitution now permits a Government servant to challenge every statutory rule, whatever the inconvenience and whatever the confusion that may be caused by such action on the part of the Government servant. Now, there is nothing in the language of Arts. 309 and 313 which bring about any change from the position which obtained under the Government of India Act. The one important circumstance to which our attention has been drawn by Mr. Daji is that there was a sub-section, sub-s. (5) of S. 241, to the effect that 'no rules made under the section and no Act of any Legislature of India shall be construed to limit or abridge the power of the Governor-General or a Governor to deal with the case of any person serving His Majesty in a civil capacity in India in such manner as may appear to him to be just and equitable : ' and it is said that this subsection no longer finds a place in the Constitution. But as rightly pointed out by Parikh, there is no longer any reason for enacting sub-s. (5) of S. 241 because the Government of India Act, having made the office of a civil servant at the pleasure of His Majesty, had to confer certain powers upon the Governor General and the Governor to deal with cases of the services. That difficulty no longer arises under the Constitution because under the Constitution the President as the head of India and the Governors as the head of the States have been given the power to deal with the services.

(9) The other contention put forward by Mr. Daji is that the position in England with regard to the doctrine of King's pleasure is very different from the position in India. It is said that in England the Crown has prerogative rights and one of those prerogatives is to dismiss its servants at pleasure and not to be bound by any contract with the servant. It is said that in India the President has no prerogatives; he is not supreme, but what is supreme in our country is the Constitution, and therefore if the Constitution confers any rights, those rights cannot be countered by suggesting that there are privileges or prerogatives higher than the Constitution itself. It seems to us that that argument is without much substance. When the [Constitution of India](#) accepts and adopts a doctrine that a civil servant holds his office at the pleasure of the Crown, it is futile to suggest that the Constitution-makers did not wish that doctrine to have full sway. It must not be forgotten that that doctrine does not owe its origin to the sanctity in which the Crown is held in England, nor to its absolute powers or to its prerogatives. That doctrine is based upon principles of public policy and there is no reason to suggest that principles of public policy which have endured for hundreds of years in England should not have been accepted by us and incorporated in our own Constitution. Therefore, it is for Mr. Daji to establish that by the Constitution, although the doctrine is embodied in Art . 310 it has been cut down or truncated.

(10) It is said that a certain decision of the Supreme Court does modify the doctrine as it prevails in India, and storing reliance was placed on State of Bihar v. Abdul Majid, : (1954)11LLJ678SC . In that case the question that the Supreme Court was considering was whether a civil servant could maintain a suit against a State for recovery of arrears of salary. Admittedly, he could not do so under the English law, and the Supreme Court held that that rule did not prevail in India. The Supreme Court came to this conclusion on two grounds. One was that this doctrine in England was based upon the principle that a salary paid to a civil servant was a bounty, the Crown was not bound to pay the salary in law, and when it did pay the salary it was not under any obligation but ex-gratia. It was pointed out by the Supreme Court that in view of the provisions of the Civil Procedure Code, where the salary of a Government servant could be attached at the instance of a creditor, it was impossible to take the view that the salary was a bounty, and the Supreme Court also pointed out that the doctrine in England was

based upon another rule that a King could not be sued in his own Court, that the subject could only approach him by a petition of right, and the Supreme Court said that that doctrine did not prevail in India also. Therefore, it is only to this limited extent, to the extent that in India the Union could be sued for arrears of salary, that the doctrine of a Government servant being employed at the King's pleasure has been cut down or limited. There is no suggestion in this judgment of the Supreme Court that the principle enunciated by the Privy Council in Venkata Rao's case , or Rangachari's case , no longer obtains. It is true that the Supreme Court was not considering the provisions of the Constitution but of S. 240 of the Government of India Act. But our attention has not been drawn to any subsequent decision of the Supreme Court where the view has been taken that by reason of the enactment of the Constitution the law laid down by the Privy Council in and is no longer good law.

(11) As a matter of fact, the Supreme Court in a very recent decision in Parshotam Lal Dhingra v. Union of India : (1958)ILLJ544SC , has pointed out that subject to the exceptions contained in Art. 311 our Constitution has adopted the English Common Law Rule that public servants hold office during the pleasure of the President or the Governor as the case may be, and they also point out that all that Abdul Majid's case : (1954)ILLJ678SC , laid down was that the English Common Law rule regarding the holding of office by public servants only during the pleasure of the Crown has not been adopted by us in its entirety and with all its rigorous implications. But subject to these exceptions, the exception of Art. 311 and the exception enunciated by Abdul Majid's case, : (1954)ILLJ678SC , with regard to the recovery of arrears of salary, it is not suggested, with respect, by the Supreme Court in its judgment that the doctrine of a Government servant holding office during the King's pleasure has been in any way further limited or cut down.

(12) To come back to the question with which we began in this judgment, can it be said in this case that the plaintiff is seeking to enforce a contractual obligation undertaken by the Union of India? Before there can be a contractual obligation there must be a contract. If we take the view that the President, under the doctrine of every servant of his holding office during his pleasure, cannot be bound by any contract, then no further question survives. But even assuming that that aspect of

the doctrine may not be accepted here and that it is open to the Union or the President to enter into a contract with his servants or any of them, the question still remains whether in fact there is a contract between the President and the plaintiff. We refuse to look upon the rules contained in the Railway Establishment Code as the contract between the parties. The rules, as the Privy Council point out in Venkata Rao's case , are so detailed and so administrative in their aspect that it is impossible for us to take view that every one of these rules constitute a term of contract between the plaintiff and the Union of India. Our attention was drawn to the service agreement which is to be signed by every non-personable railway servant under R. 143. The plaintiff is a non-personable railway servant and it is his case that he has signed such a service agreement, and when we look at the form of this service agreement, it is significant that this form does not impose any obligations upon the Railway Authority in respect of any of the rules contained in the Railway Code. The agreement provides that the Railway servant shall be bound by all general rules and regulations of Government service which are imposed from time to time and may be in force. But the agreement does not provide that the Railway Authority shall be bound by any rule or regulation contained in the Code. Therefore, it is clear that the Railway Authority has not undertaken by this service agreement any contractual obligation in respect of any of the rules or regulations contained in the Railway Code. It is rather significant that clause (8) confers an obligation upon the Railway Authority to pay the salary to the employee and it may well be said, apart from Abdul Majid's case, : (1954)IILLJ678SC , that if a Railway servant sues for his salary he is entitled to do so because the Railway Authority has accepted a contractual obligation to pay him the salary. But we find nothing whatever in this agreement to suggest that with regard to grading the plaintiff, whether he should be put in Grade B or Grade C, any contractual obligation has been undertaken by the Railway Authority. It may be possible, and we express no opinion on it, that the Union of India or the President may be bound if a contract was entered into between the Government and the civil servant by which Government accepted certain obligations and conferred certain rights upon the civil servant. We have not before us such a case. It is clear from the record that this is not a case where there is any special contract between the Union of India and the civil servant by which the Union has

undertaken the obligation or conferred the right upon the plaintiff in respect of which this suit is filed, and therefore it is possible to dispose of this appeal on this narrow issue that in the absence of any contract, the rules by themselves not constituting the contract, the plaintiff is not entitled to sue the Union of India.

(13) The result is that the appeal must fail and is dismissed with costs.

(14) Appeal dismissed.

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