

The North-West Frontier Province - - - - - *Appellant*

v.

Suraj Narain Anand - - - - - *Respondent*

FROM

THE FEDERAL COURT OF INDIA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL (PART 2), DELIVERED THE
4TH NOVEMBER, 1948

Present at the Hearing :

LORD THANKERTON

LORD DU PARCQ

LORD OAKSEY

LORD MORTON OF HENRYTON

MR. M. R. JAYAKAR

[Part 2 ; *Delivered by* LORD DU PARCQ]

On the 18th March, 1948, a judgment was delivered by the late Lord Thankerton, in which their Lordships stated the reasons which led them to the conclusion that they should humbly advise His Majesty that this appeal should be allowed. Their Lordships do not propose now to repeat what was then said. It suffices to say that the decision of the Board was given on the assumption, which then appeared to be justified, and had not, indeed, been questioned, that the Police Rules of 1937, to which the judgment refers, had become operative in the year 1938, and at some date prior to the 25th April, 1938, when the respondent was dismissed from the force.

Subsequently to the delivery of the judgment, and before their Lordships had tendered their advice to His Majesty, the respondent submitted a petition wherein he prayed that their Lordships might reconsider their decision, mainly on the ground that it had been ascertained that the Police Rules of 1937 were in fact printed and published on the 29th April, 1938, that is to say four days after the dismissal of the respondent.

Their Lordships accordingly found it necessary to hear further argument and on the 29th July, 1948, counsel for both parties appeared at their Lordships' bar. It was then admitted that the Police Rules of 1937 were in truth printed and published on the 29th April, 1938, as the respondent alleged. It follows, in the opinion of their Lordships, that, applying the reasoning contained in the judgment previously delivered, they can only come to the opposite conclusion to that which they had formed on what is now shown to be an erroneous assumption as to a material fact.

At the hearing on the 29th July of this year counsel for the appellant made an alternative submission to the effect that the rule on which the appellant relies came into force immediately upon its approval by the Governor in Council, and stated that, according to his instructions, that approval was signified on the 17th April, 1935. Assuming these instructions to be correct, and further assuming (though without deciding) that

the approval of the Governor in Council brought the rules immediately into effect, their Lordships are of opinion that, as against the respondent, the rule in question would none the less be inoperative, since the Government of India Act, 1935, under which the rule would have been valid against him, did not come into force until the 1st April, 1937, and could not then retrospectively affect the respondent's position.

On the 6th August, 1948, their Lordships caused a letter to be addressed to the Solicitor representing the appellant, informing him that their Lordships now proposed humbly to advise His Majesty that the appeal should be dismissed, and stating that the order as to costs would not be varied. The letter pointed out that if this advice were tendered, and if His Majesty were pleased to accept it, the effect would be that the declaratory judgment of the Federal Court would stand. Finally, the letter referred to the award of Rs.2,283 to the respondent by the Court of the Judicial Commissioner which according to a submission made by the appellant's counsel was open to challenge and inquired whether the appellant wished to have an opportunity of satisfying their Lordships that the point was open, and of being heard upon it. By their Lordships' direction, a copy of this letter was sent to the respondent.

Their Lordships have now received an intimation that the appellant does not wish to offer any further argument in this case. The respondent, as his counsel stated when the matter was last before the Board, does desire an opportunity of arguing that he shall now be awarded arrears of pay from the date of the institution of his suit on the 17th June, 1939. Their Lordships do not propose to deal further with this matter. If, in accordance with their Lordships' humble advice, the declaratory judgment of the Federal Court is restored, it will be open to the respondent to pursue any remedy which flows from that declaratory judgment in the appropriate Court. Their Lordships must not be understood, however, as expressing an opinion that the respondent was entitled as of right to recover the sum of Rs.2,283 which was awarded to him, or that he has any claim to a further sum in respect of arrears of pay. It is unnecessary, owing to the very proper attitude of the appellant, to express any view as to the former question, and the latter question does not arise in this appeal, which is from the decision of the Federal Court. If that decision is affirmed the respondent, who did not himself enter an appeal, cannot now ask for anything more.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed, and that the judgment and decree of the Federal Court dated the 4th December, 1941, should be affirmed. The appellant must pay the respondent's costs of this appeal as between solicitor and client.

In the Privy Council

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