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September 30.

THE STATE OF UTTAR PRADESH

v.

MOHAMMAD NOOH

(S. R. DAS, C. J., VENKATARAMA AYYAR, JAFER IMAM, A. K. SARKAR and VIVIAN BOSE, JJ.)

Certiorari, writ of—Principles governing issue—Availability of alternative remedy by appeal, if a bar—Departmental enquiry—Violation of principles of natural justice—Presiding officer himself a witness—Order of dismissal made previous to the Constitution—Revision disallowed after the Constitution—Such order, if can be quashed—Constitution of India, Art. 226.

A departmental enquiry against the respondent, a Head Constable, was held by the District Superintendent of Police. During the enquiry the District Superintendent of Police himself became a witness and gave evidence at two stages against the respondent, his statement being recorded by a Deputy Superindendent of Police. The District Superintendent of Police then found the respondent guilty and on April 20, 1948, passed an order of dismissal against him. The respondent went up in appeal to the Deputy Inspector General of Police but the appeal was dismissed on May 7, 1949. The respondent then filed a revision application to the Inspector General of Police which was also dismissed on April 22, 1950. Thereupon, the respondent filed a writ petition under Art. 226 of the Constitution before the High Court praying for the setting aside of the order of dismissal. The High Court held that the rules of natural justice and fair-play had been disregarded and accordingly, quashed the proceedings and set aside the three several orders. The State obtained a certificate of fitness and appealed.

Held, (per curiam) that the District Superintendent of Police who had acted both as the judge and as a witness had disqualified himself from presiding over the enquiry. The procedure adopted was contrary to the rules of natural justice and fair-play. Decisions and orders based on such procedure are invalid and not binding.

There is no rule with regard to certiorari, as there is with mandamus, that it will lie only where there is no other equally effective remedy. The existence of another adequate remedy may be taken into consideration in the exercise of the discretion. If an inferior Court or tribunal of first instance acts without jurisdiction or in excess of it or contrary to the rules of natural justice, the superior Court may quite properly issue a writ of certiorari to correct the error, even if an appeal to another inferior Court or tribunal was available, whether recourse was or was not had to it. This would be so all the more in the case of departmental tribunals composed of persons without adequate legal training and background.

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Janardan Reddy v. *The State of Hyderabad,* (1951) S.C.R. 344 referred to. *King* v. *Postmaster-General, Exparte Carmichael* (1928) *I K.B.* 291; *Rex* v. *Wandsworths Justices, Exparte Read,* (1942) I K.B. 281; *Khurshed Modi* v. *Rent Controller, Bombay,* A.I.R. (1947) Bom. 46; *Assistant Collector of Customs* v. *Soorajmull Nagarmull,* (1952) 56 C.W.N. 453 relied on.

Held, (per S. R. Das, C. J., Venkatarama Ayyar, Jafer Imam and Sarkar, J. Bose J., dessenting) that Art. 226 of the Constitution is not retrospective and the High Court could not exercise its powers under Art. 226 to quash the order of dismissal passed before the commencement of the Constitution. It is wrong to say that the order of dismissal passed on April 20, 1948, merged in the order in the appeal dated May 7, 1949, and the two orders merged in the order in the revision dated April 22, 1950, or that the original order of dismissal became final only on the passing of the order in revision. The original order of dismissal was operative on its own strength.

Per Bose, J.—The High Court had jurisdiction to quash all the orders, as the proceedings should be regarded as still pending till the order in revision was passed on April 22, 1950. The District Superintendent of Police was acting in a judicial capacity and was bound to observe principles of natural justice. These principles he ignored.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 130 of 1956.

Appeal from the judgement and decree dated the 10th March, 1952, of the Allahabad High Court in Civil Writ No. 737 of 1951.

G. C. Mathur and *C. P. Lal,* for the appellant.

S. P. Sinha and *S. D. Sekhri,* for the respondent.

1957. September 30. The judgment of Das C. J., Venkatarama Ayyar, Jafer Imam and Sarkar JJ. was delivered by Das C. J. Bose J. delivered a separate judgment.

Das C. J.

DAS C. J.—This is an appeal filed under a certificate of fitness granted by the High Court of Judicature at Allahabad under Arts. 132(1) and 133 (1) (c) of the Constitution. It is directed against the judgment and order of a Division Bench of the said High Court pronounced on March 10, 1952, in Civil Misc. Writ No. 7376 of 1951 quashing the departmental proceedings against the respondent and the orders passed

therein, namely, the order for his dismissal passed by the District Superintendent of Police on December 21, 1948, the order of the Deputy Inspector General of Police passed on June 7, 1949, dismissing his appeal against the order of his dismissal and the order of the Inspector General of Police dated April 22, 1950 rejecting his application for revision. The judgment of the High Court also directed that, if it were desired to proceed against the respondent, the trial should be presided over by a person other than the District Superintendent of Police who gave evidence in the case and also passed the order of dismissal against the respondent and that it should be in strict conformity with the relevant Police Regulations.

The respondent was a constable in the Uttar Pradesh Police Force and was, at the material time, officiating as a Head Constable and posted in the District of Fatehpur. In December, 1947, sixty candidates had to be selected from the Police Force for training at the Police Training College, Moradabad. The respondent was sent up for selection from the District of Fatehpur. He, however, failed in the Hindi test and was not selected and sixty other candidates were selected for the training.

On December 8, 1947 a letter, purporting to have been issued from Lucknow, was received in the U.P. Police Head Office at Allahabad intimating that the respondent had been selected for training at the Police Training College. As there were only sixty vacancies and as sixty candidates had already been selected, the Head Office people were led to make enquiries as to how this letter came to be issued from Lucknow. The letter having been placed before the Inspector General of Police, Lucknow, he declared it to be a forgery. As the letter was ostensibly for the benefit of the respondent, it was naturally suspected that it must have been sent by or at his instance.

On March, 15, 1948 the respondent was placed under suspension. Under s. 243 of the Government of India Act, 1935, which was then in force, the respondent, who was in the police force, was not governed by sub-s. (3) of s. 240 which corresponds to art.

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311(2) of the Constitution but was governed by the Police Act, 1861 (Act V of 1861) and the Regulations made thereunder by the State Government. Accordingly, under s. 7 of the Police Act read with Uttar Pradesh Police Regulations, a departmental enquiry, called a "trial" in the Regulations, was started against the respondent. One Shri B. N. Bhalla, the then District Superintendent of Police, Fatehpur, was deputed to hold the trial. He found the respondent guilty and on April 20, 1948 passed an order of dismissal against him. The respondent went up on appeal to the Deputy Inspector General of Police under Reg. 508. That appeal was dismissed on June 7, 1949. The respondent then filed a revision application to the Inspector General of Police under Reg. 512. That application was also dismissed on April 22, 1950.

Having exhausted all his remedies under the Police Act read with the Regulations thereunder the respondent on February 24, 1951, filed a writ petition under Art. 226 of the Constitution, praying that the file of the applicant (now respondent) be called for and his dismissal be set aside and that he be given such further and other relief as he may, in law, be entitled to. The main point taken in the affidavit filed in support of the petition and urged before the High Court was that Shri B. N. Bhalla, District Superintendent of Police, who presided over the trial and as such had to come to a finding and to make an order, also gave his own evidence in the proceedings at two stages and had thus become disqualified from continuing as the judge, as, in the circumstances he was bound to be biased against the respondent.

A preliminary objection was taken on behalf of the appellant State that the High Court had no power, under Art. 226, to deal with the order of dismissal which had been passed at a time when the Constitution of India had not come into force, but the High Court rejected that plea as it took the view that the order of dismissal passed by the District Superintendent of Police on December 20, 1948, and the order of dismissal of the appeal passed by the Deputy Inspector General of Police on June 7, 1949, had not become final

until the Inspector General of Police, on April 22, 1950, made his order dismissing the revision application filed by the respondent under Reg. 512 and that as the last mentioned order had been passed after the Constitution had come into force, and had, by Art. 226, vested powers in the High Court to issue prerogative writs, the High Court had ample jurisdiction to exercise its newly acquired powers under that article. On the merits the High Court came to the conclusion that the rules of natural justice and fair-play had been disregarded, in that the District Superintendent of Police had continued to preside over the trial even after it had become necessary for him to put on the record his own testimony as against that of another witness and it held that the presiding officer had, in the circumstances, become disqualified, on the ground of bias, from further acting as the presiding officer and that the departmental trial conducted by him thereafter had become vitiated. The High Court, accordingly, quashed the proceedings and set aside the three several orders hereinbefore mentioned. The appellant State on February 4, 1955, obtained from the High Court a certificate of fitness under Arts. 132(1) and 133(1)(c) and hence the present appeal to this Court.

It will be recalled that the forged letter of December 8, 1947, was suspected to have been manufactured or sent by or at the instance of the respondent to further his interest. The case against the respondent was that the offending letter had been typed by one Shariful Hasan, the typist attached to the office of the Superintendent of Police, Fatehpur, and, therefore, it was essential for the department to establish that the respondent was in friendly relations with Shariful Hasan who was said to have typed the letter. Apparently in some preliminary enquiry and in the presence of Shri B. N. Bhalla one Mohammad Khalil, a Head Constable, had spoken about Shariful Hasan being very friendly with the respondent. But while giving his evidence at the departmental trial the said Mohammad Khalil denied having made any such statement. In the circumstances it became necessary to contradict him by the testimony of Shri B. N. Bhalla

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in whose presence that witness had, on a previous occasion, stated that Shariful Hasan was very friendly with the respondent. Accordingly Shri B. N. Bhalla had his testimony recorded by a Deputy Superintendent of Police. This was done at two stages, namely, once before the charges were framed and again after the framing of the charges. The respondent's grievance is that Shri B. N. Bhalla, who had thus become a witness in the case, ought not to have further continued to act as the presiding officer and that his continuing to do so vitiated the trial and his order was a nullity. That Shri B. N. Bhalla had his own testimony recorded in the case is not denied. Indeed the appellant State, in opposition to the respondent's writ application, filed an affidavit affirmed by Shri B. N. Bhalla, paragraph 8 of which runs as follows :

"8. That the deponent gave his first statement on 13th October, 1948, which was recorded by Shri Mohammad Sadiq, Deputy Superintendent of Police before the charge and the second statement on 25th October, 1948, which was recorded by another Deputy Superintendent of Police after the charge. One Head Constable, Mohammad Khalil, who was prosecution witness in the case, when cross-examined denied to have said that the applicant and Shariful Hasan were on friendly terms. He turned hostile and it became necessary for the deponent to depose about certain facts which had happened in his presence and which belied the testimony of Mohammad Khalil."

The salient facts being thus admitted there can be no escape from the conclusion that Shri B. N. Bhalla should not have presided over the trial any longer. The point in issue was whether Shariful Hasan was in friendly relationship with the respondent. Mohammad Khalil had in his evidence at the trial denied having made any statement to this effect. Shri B. N. Bhalla gave evidence that Mohammad Khalil had in his presence admitted this friendship of Shariful Hasan with the respondent. Which of the two witnesses, Mohammad Khalil and Shri B. N. Bhalla, was to be believed was the duty of the person presiding over the trial to determine. Shri B. N. Bhalla was obviously

most ill suited to undertake that task. Having pitted his evidence against that of Mohammad Khalil Shri B. N. Bhalla vacated the Judge's seat and entered the arena as a witness. The two roles could not obviously be played by one and the same person. Indeed Shri B. N. Bhalla himself realised it and accordingly had his own evidence recorded on both the occasions by other high officers. It is futile to expect that he could, in the circumstances, hold the scale even. It is suggested that there might have been other evidence establishing the friendship between Shariful Hasan and the respondent and that the evidence of Shri B. N. Bhalla might not have been relied on or might not have been the deciding factor. There is nothing on the record before us to support this suggestion. But assuming that Shri B. N. Bhalla did not rely on his own evidence in preference to that of Mohammad Khalil—a fact which is hard to believe, especially in the face of his own affidavit quoted above—the act of Shri B. N. Bhalla in having his own testimony recorded in the case indubitably evidences a state of mind which clearly discloses considerable bias against the respondent. If it shocks our notions of judicial propriety and fair-play, as indeed it does, it was bound to make a deeper impression on the mind of the respondent as to the unreality and futility of the proceedings conducted in this fashion. We find ourselves in agreement with the High Court that the rules of natural justice were completely discarded and all canons of fair-play were grievously violated by Shri B. N. Bhalla continuing to preside over the trial. Decision arrived at by such process and order founded on such decision cannot possibly be regarded as valid or binding.

Learned counsel appearing for the appellant State then urges that, assuming that any error, irregularity or illegality had been committed by Shri B. N. Bhalla in the course of the trial held by him, a writ application under art. 226 was not the proper remedy for correcting the same. Reference is made to s. 7 of the Police Act, 1861 which, subject to such rules as the State Government may make under the Act, gives

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power to certain specified Police Officers of high rank to dismiss, suspend or reduce any Police Officer of the subordinate ranks whom they may think remiss or negligent in the discharge of his duties or unfit for the same. Regulation 508 of the Police Regulations made by the State of Uttar Pradesh provides for an appeal from the decision of the officer holding the trial. Likewise Reg. 512 confers on an officer whose appeal has been rejected to submit an application for revision to the authority next in rank above that by which his appeal has been rejected. The argument is that the Police Act and the Regulations made thereunder having provided for an appeal and a revision and having set up special forums with full powers and jurisdiction to correct the error, irregularity or illegality touching jurisdiction, procedure and the merits committed by the officer presiding over the trial, such forums alone are competent to correct all such errors, irregularities and illegalities. In this case admittedly the respondent preferred an appeal and then went up to the Inspector General of Police in revision. In the appeal and in the revision the respondent either took the plea of the breach of the rules of natural justice and fair-play now complained of or he did not. The respondent knew the material facts and must be deemed to have been conscious of his legal rights in the matter and, therefore, if he failed to raise the objection before the officer who was dealing with his appeal or revision he cannot, it is urged, be permitted to do so for the first time on a writ petition under Art. 226 before the High Court, as has been held by this Court in *Manak Lal* v. *Dr. Prem Chand*(1). On the other hand if he had raised the question in his grounds of appeal or in his revision petition and insisted on it at the hearing of his appeal or his revision application then the orders of dismissal of his appeal and his revision petition by authorities fully competent and having full powers and jurisdiction to decide the question must be taken as a rejection of that plea on its merits and as no error or irregularity or illegality is alleged to have been committed at the

(1) A.I.R. 1957 S.C. 425.

stages of the appeal or the revision proceedings, the High Court could not, under Art. 226, interfere in the matter. In support of this argument learned counsel for the appellant State relies upon the decision of this Court in *Janardan Reddy* v. *The State of Hyderabad*(1). In that case the petitioners were convicted by a special Tribunal of Hyderabad of murder and other offences and sentenced to death by hanging. Their convictions and sentences had been confirmed by the Hyderabad High Court before January 26, 1950, when the Constitution of India came into force. It was after the commencement of the Constitution that the petitioners applied to this Court under Art. 32 praying (1) for a writ in the nature of *certiorari* calling upon the Government of Hyderabad and the Special Judge to produce the records of the case and to show cause why the convictions and sentences should not be quashed and (2) for a writ of prohibition directing the Government and the Special Judge not to execute the petitioners. Subsequently the petition was amended, with the leave of the court, by adding prayer (3) for a writ of *habeas corpus*. A number of points were raised before this Court. As regards the several points complaining of alleged illegality by reason of misjoinder of charges and the inflection of the sentence of death by hanging and not decapitation this Court at page 351 observed :

"But, for the purpose of the present case, it is sufficient to point out that even if we assume that there was some defect in the procedure followed at the trial, it does not follow that the trial court acted without jurisdiction. There is a basic difference between want of jurisdiction, and an illegal or irregular exercise of jurisdiction, and our attention has not been drawn to any authority in which mere non-compliance with the rules of procedure has been made a ground for granting one of the writs prayed for. In either case, the defect, if any, can according to the procedure established by law be corrected only by a court of appeal or revision. Here the appellate court which was competent to deal with the matter has pronounced its judgment against the petitioners, and the matter

(1) [1951] S.C.R. 344.

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having been finally decided is not one to be reopened in a proceeding under article 32 of the Constitution." As regards the prayers for writs of *certiorari* and prohibition it was held that the writs of *certiorari* and prohibition were hardly appropriate remedies in that case, because they were usually directed to an inferior court, but at the date when the High Court dealt with those cases and confirmed the convictions and sentences of the petitioners, this Court was not in existence, and at that point of time, by no stretch of reasoning, the High Court could be said to have been subordinate to this Court. Then this Court went on to consider the remaining questions, namely, whether after the commencement of the Constitution this Court could exercise its newly acquired jurisdiction under Art. 32 and issue a writ of *habeas corpus* as the detention of the petitioners was continuing even after the commencement of the Constitution. It was urged that it was open to the petitioners to prove by affidavit that the court which passed the order had acted without jurisdiction or in excess of it and the superior court was free to investigate the matter. After stating that a return that the persons were in detention in execution of sentences on indictment on criminal charges was a sufficient answer to the application for a wirt of *habeas corpus,* this Court proceeded at pages 366-367 to observe as follows :

"Assuming however, that it is open even in such cases to investigate the question of jurisdiction, as was held in *In re Authers*(1), it appears to us that the learned judges who decided that case went too far in holding that notwithstanding the fact that the conviction and sentence had been upheld on appeal by a court of competent jurisdiction, the mere fact that the trial court, had acted without jurisdiction would justify interference, treating the appellate order as a nullity. Evidently, the Appellate Court, in a case which properly comes before it on appeal, is fully competent to decide whether the trial was with or without jurisdiction, and it has jurisdiction to decide the matter rightly as well as wrongly. If it affirms the con-

(1) [1889] L.R. 22 Q.B.D. 345.

viction and thereby decides wrongly that the trial court had the jurisdiction to try and convict, it cannot be said to have acted without jurisdiction, and its order cannot be treated as a nullity. It is true that there is no such thing as the principle of constructive *res judicata* in a criminal case, but there is such a principle as finality of judgments, which applies to criminal as well as civil cases and is implicit in every system, wherein provisions are to be found for corecting errors in appeal or in revision."

In the first place it must be noted that the two observations quoted from the decision of this Court on which reliance is placed on behalf of the appellant State were made in a case where the alleged error, irregularity or illegality was committed by a special tribunal which had not merely the trappings of a court but was a court of law presided over by a judge with legal training and background and bound by rules of evidence and procedure laid down for it and the appeal from its decision lay before the highest and final court of the State—a superior court of record. But orders made on departmental "trial" held by an officer in the department without any legal training and orders passed by his superior officers in the same department on appeal or in revision which, in the words of Harries C.J. in *Assistant Collector of Customs* v. *Soorajmull Nagarmull* (1) were only in the nature of an appeal from Caesar to Caesar and which might not be regarded with any great confidence by persons brought before them can hardly be equated with reasonable propriety with the orders passed by the Special Tribunal and an appeal therefrom by the Hyderabad High Court with reference to which bodies alone the said observations had been made.

In the next place it must be borne in mind that there is no rule, with regard to *certiorari* as there is with *mandamus*, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, *certiorari*, will lie although a right of appeal has been conferred by statute. (Halsbury's Laws of England, 3rd Ed., Vol. 11, p. 130 and the cases cited there) The fact

(1) (1952) 56 C.W.N. 453, 467.

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that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of *certiorari* to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of *certiorari* has been issued in spite of the fact that the aggrieved party had other adequate legal remedies. In the *King* v. *Postmaster-General Ex parte Carmichael*(1) a *certiorari* was issued although the aggrieved party had an alternative remedy by way of appeal. It has been held that the superior court will readily issue a *certiorari* in a case where there has been a denial of natural justice before a court of summary jurisdiction. The case of *Rex* v. *Wandsworth Justices Ex parte Read*(2) is an authority in point. In that case a man had been convicted in a court of summary jurisdiction without giving him an opportunity of being heard. It was held that his remedy was not by a case stated or by an appeal before the quarter sessions but by application to the High Court for an order of *certiorari* to remove and quash the conviction. At page 284 Viscount Caldecote C.J. observed :

"It remains to consider the argument that the remedy of *certiorari* is not open to the applicant because others were available. It would be ludicrous in such a case as the present for the convicted person to ask for a case to be stated. It would mean asking this court to consider as a question of law whether justices were right in convicting a man without hearing his evidence. That is so extravagant an argument as not to merit a moment's consideration. As to the right of appeal to quarter sessions, it may be that the applicant could have had his remedy if he

(1) [1928] 1 K.B. 291. (2) [1942] 1 K.B. 281.

had pursued that course, but I am not aware of any reason why, if in such circumstances as these, he preferred to apply for an other of *certiorari* to quash his conviction, the court should be debarred from granting his application."

Likewise in *Khurshed Modi* v. *Rent Controller, Bombay*(1), it was held that the High Court would not refuse to issue a writ of *certiorari* merely because there was a right of appeal. It was recognized that ordinarily the High Court would require the petitioner to have recourse to his ordinary remedies, but if it found that there had been a breach of fundamental principles of justice, the High Court would certainly not hesitate to issue the writ of *certiorari*. To the same effect are the following observations of Harries C.J. in *Assistant Collector of Customs* v. *Soorajmull Nagarmull* (2) at page 470 :

"There can, I think, be no doubt that Court can refuse to issue a *certiorari* if the petitioner has other remedies equally convenient and effective. But it appears to me that there can be cases where the court can and should issue a *certiorari* even where such alternative remedies are available. Where a Court or Tribunal, which is called upon to exercise judicial or *quasi*-judicial functions discards all rules of natural justice and arrives at a decision contrary to all accepted principles of justice then it appears to me that the court can and must interfere."

It has also been held that a litigant who has lost his right of appeal or has failed to perfect an appeal by no fault of his own may in a proper case obtain a review by *certiorari*. (See Corpus Juris Secundum Vol. 14. art. 40, p. 189). If, therefore, the existence of other adequate legal remedies is not *per se* a bar to the issue of a writ of *certiorari* and if in a proper case it may be the duty of the superior court to issue a writ of *certiorari* to correct the errors of an inferior court or tribunal called upon to exercise judicial or *quasi*-judicial functions and not to relegate the petitioner to other legal remedies available to him and if the superior court can in a proper case exercise its

(1) A.I.R. 1947 Bom. 46. (2) (1952) 56 C.W.N. 453.

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jurisdiction in favour of a petitioner who has allowed the time to appeal to expire or has not perfected his appeal, *e.g.*, by furnishing security required by the statute, should it then be laid down as an inflexible rule of law that the superior court must deny the writ when an inferior court or tribunal by discarding all principles of natural justice and all accepted rules of procedure arrived at a conclusion which shocks the sense of justice and fair-play merely because such decision has been upheld by another inferior court or tribunal on appeal or revision? The case of *In re Authers*(1) referred to in *Janardan Reddy's case*(2) furnishes the answer. There the manager of a club was convicted under a certain statute for selling beer by retail without an excise retail license. Subsequently he was convicted of selling intoxicating liquor, namely, beer without a license under another statute. Upon hearing of the later charge the magistrate treated it as a second offence and imposed a full penalty authorised in the case of a second offence by the latter statute. His appeal to the quarter sessions having been dismissed, he applied for a writ of *habeas corpus* and it was granted by the King's Bench Division on the ground that the magistrate could not treat the later offence as a second offence because it was not a second offence under the Act under which he was convicted for the second time. Evidently the point was taken that if there had been any error, irregularity or illegality committed by the magistrate, the quarter sessions could have on appeal corrected the same and that the quarter sessions having dismissed the appeal the court of Queen's Bench Division could not issue the writ of *habeas corpus*. This was repelled by the following observation of Hawkins J.:

"This is true as a fact, but it puts the prosecution in no better position, for if the magistrate had no power to give himself jurisdiction by finding that there had been a first offence where there had been none, the justices could not give it to him."

On the authorities referred to above it appears to us that there may conceivably be cases—and the in-

(1) [1889] L.R. 22 Q.B.D. 345. (2) [1951] S.C.R.344

stant case is in point—where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense of fair play the superior court may, we think, quite properly exercise its power to issue the prerogative writ of *certiorari* to correct the error of the court or tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what *ex facie* was a nullity for reasons aforementioned. This would be so all the more if the tribunals holding the original trial and the tribunals hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice. The superior court will ordinarily decline to interfere by issuing *certiorari* and all we say is that in a proper case of the kind mentioned above it has the power to do so and may and should exercise it. We say no more than that.

Learned counsel for the appellant State next urges that because the order of dismissal was passed by the District Superintendent of Police on December 20, 1948, and the order dismissing the appeal was passed by the Deputy Inspector General of Police on June 7, 1949, both of which were before the commencement of the Constitution, the High Court could not exercise its powers under Art. 226 to quash those orders. This argument is countered by the respondent by the argument that the dismissal order of December 20, 1948, did not become final until after the Inspector-General of Police had dismissed the revision

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application on April 22, 1950, that is to say, after the Constitution came into force, and, therefore, the High Court had ample power to quash all the three orders.

It is not disputed that our Constitution is prospective in its application and has no retrospective operation except where the contrary has been expressly provided for. It has been held in a series of decisions of the High Courts, some of which are referred to in the judgment under appeal, that Art. 226 and Art. 227 have no retrospective operation and transactions which are past and closed and the rights and liabilities which have accrued and vested would remain unaffected. The correctness of this principle has not been questioned by the High Court when dealing with the present case and has not been disputed before us. It is, therefore, conceded that if the matter had rested with the order of dismissal passed by the District Superintendent of Police on April 20, 1948, and the order passed by the Deputy Inspector-General of Police on June 7, 1949, dismissing the appeal and confirming the order for the dismissal of the respondent, an application for a writ under Art. 226 would not lie in this High Court to set aside those orders as this was not one of the High Courts that had writ jurisdiction before the Constitution. It is, however, contended that the order of dismissal dated April 20, 1948, had merged in the order passed on appeal on June 7, 1949, and that both the orders merged in the order passed by the Inspector-General of Police on April 22, 1950, on the revision application. It is said that the revisional jurisdiction is a part of the appellate jurisdiction and the principle on which a decree of the court of first instance in a civil suit merges in the decree on appeal applies with equal force to an order made on an application for revision and consequently both the orders passed by the District Superintendent of Police and that passed on appeal by the Deputy Inspector-General of Police merged in the order passed on revision by the Inspector-General of Police on April 22, 1950. To put it shortly, the contention of the respondent is that the order of dismissal passed on April 20, 1948, became final only on the

passing of the order in revision on April 22, 1950, and as that order was passed after the date of the commencement of the Constitution, its validity could be called in question on an application under Art. 226.

There appear to be two answers to the foregoing contention. As we have already observed an order of dismissal passed on a departmental enquiry by an officer in the department and an order passed by another officer next higher in rank dismissing an appeal therefrom and an order rejecting an application for revision by the head of the department can hardly be equated with any propriety with decrees made in a civil suit under the Code of Civil Procedure by the court of first instance and the decree dismissing the appeal therefrom by an appeal court and the order dismissing the revision petition by a yet higher court, as has been sought to be done by the High Court in this case, because the departmental tribunals of the first instance or on appeal or revision are not regular courts manned by persons trained in law although they may have the trappings of the courts of law. The danger of so doing is evident from what has happened in the very case now before us. In the next place, while it is true that a decree of a court of first instance may be said to merge in the decree passed on appeal therefrom or even in the order passed in revision it does so only for certain purposes, namely, for the purposes of computing the period of limitation for execution of the decree as in *Batuk Nath v. Munni Dei*(1), or for computing the period of limitation for an application for final decree in a mortgage suit as in *Jowad Hussain* v. *Gendan Singh* (2). But, as pointed out by Sir Lawrence Jenkins in delivering the judgment of the Privy Council in *Juscurn Boid* v. *Prithichand Lal*(3) whatever be the theory under other systems of law, under the Indian Law and procedure an original decree is not suspended by the presentation of an appeal nor is its operation interrupted where the decree on

(1) (1914) L.R. 41 I.A. 104.

(2) (1926) L.R. 53 I.A. 197.

(3) (1918) L.R. 46 I.A. 52; I.L.R. 46 Cal. 670, 678-679.

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appeal is merely one of dismissal. There is nothing in the Indian Law to warrant the suggestion that the decree or order of the court or tribunal of the first instance becomes final only on the termination of all proceedings by way of appeal or revision. The filing of the appeal or revision may put the decree or order in jeopardy but until it is reversed or modified it remains effective. In that view of the matter the original order of dismissal passed on April 20, 1948, was not suspended by the presentation of appeal by the respondent nor was its operation interrupted when the Deputy Inspector-General of Police simply dismissed the appeal from that order or the Inspector-General simply dismissed the application for revision. The original order of dismissal if there were no inherent infirmities in it, was operative on its own strength and it did not gain any greater efficacy from the subsequent orders of dismissal of the appeal or the revision except for the specific purposes hereinbefore mentioned. That order of dismissal having been passed before the Constitution and rights having accrued to the appellant State and liabilities having attached to the respondent before the Constitution came into force, the subsequent conferment of jurisdiction and powers on the High Court can have no retrospective operation on such rights and liabilities. Even if the order of dismissial of the respondent was a nullity on the ground that it was passed by disregarding the rules of natural justice, the High Court could not properly be asked to exercise its newly acquired jurisdiction and powers under Art. 226 to correct errors, irregularities or illegalities committed by the inferior departmental tribunal before the commencement of the Constitution, for then there will be no limit to its going backward and that will certainly amount to giving the provisions of Art. 226 a retroactive operation. This aspect of the matter does not appear to have been pressed in the High Court or adverted to by it. It is only on this ground that we are constrained, not without regret, to accept this appeal.

The appeal is, therefore, allowed, but in the circumstances of the case we make no order as to costs.

BOSE J.—With great respect I am unable to agree.

I respectfully agree with my Lord that *Janardan Reddy's case*(1) must not be construed to mean that a High Court can never interfere under Art. 226 once a competent Court of appeal has finally decided whether a Court subordinate to it has jurisdiction or not in a given matter. I also accept the position that the Constitution is not retrospective and that the Courts cannot exercise any new jurisdiction and powers conferred by it to reopen decisions and orders that had become final before it came into being. But I cannot agree that that is the case here.

The very wide powers conferred on the High Courts by Art. 226, and on this Court by Art. 136, were given in order to ensure that justice is done in this land and that the Rule of Law prevails. I see no reason why any narrow or ultra technical restrictions should be placed on them. Justice should, in my opinion, be administered in our Courts in a common-sense liberal way and be broad-based on human values rather than on narrow and restricted considerations hedged round with hairsplitting technicalities.

What is the position here? What would have been the result if the order of April 20, 1948, dismissing the respondent had been passed after the Constitution instead of before it? At what point of time would the High Court have entertained a petition under Art. 226?

I think it is elementary that, save in exceptional cases, the Courts will not interfere under Art. 226 until all normal remedies available to a petitioner have been exhausted. The normal remedies in a case of this kind are appeal and revision. It is true that on a matter of jurisdiction, or on a question that goes to the root of the case, the High Courts can entertain a petition at an earlier stage but they are not bound to do so and a petition would not be thrown out because the petitioner had done that which the Courts usually direct him to do, namely, to exhaust his normal remedies before invoking an extraordinary jurisdiction. Therefore, if this order of dismissal had

(1) [1951] S.C.R. 344.

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been made after the Constitution, the petitioner would have been expected to pursue his remedies of appeal and revision first and could not have come to the High Court *in the ordinary way* until he had exhausted them; and having come at that stage he could not have been turned away unheard on the ground that he was out of time because his grievance was against the original order. The very decisions to which my Lord has referred established that for these purposes, at any rate, the earlier orders would merge in the final one. But I am not basing on technicalities. What is plain to me is that if this order of dismissal had been made after the Constitution, the petitioner would have been entitled to wait for the final order (and in the ordinary way would have been bound to wait) before coming to the High Court. Why is the position any different because he has done before the Constitution exactly what he would have been expected, and in the ordinary course bound, to do after it?

The final order was passed after the Constitution on April 22, 1950. It is true that if it had been passed before the Constitution came into force on January 26, 1950, the petitioner would have had no remedy in the Courts. But the Constitution breathed fresh life into this land and conferred precious rights and privileges that were not there before. Why should they be viewed narrowly? Why should not that which would have been regarded as still pending for present purposes, if all had been done after the Constitution, be construed in any different way when the final act, which is the decisive one for these purposes was done after it?

I regard it as unduly narrow and restrictive to equate these broad-based constitutional privileges to highly technical procedural decisions dealing with limitation and the merger of decrees. The question to my mind is not whether there has been merger but whether those proceedings can, on any broad and common-sense view, be regarded as still pending *for the purposes of Art.* 226. If they would be so regarded when all is done after the Constitution (and about that I have no doubt), what conceivable justification

is there for holding that they cannot in this case just because a part of the process had started before it?

The principle that new rights conferred under the Constitution can be used in pending proceedings with devastating effect has been accepted by this Court in many cases. In *Lachmandas Kewalram Ahuja* v. *The State of Bombay*(1), my Lord the Chief Justice, delivering the judgment of the Court, pointed out at page 734 that though the Legislature has power to take away normal rights of, among other things, transfer and revision in a criminal case before the Constitution, that kind of legislation became bad after the Constitution, even if it had been enacted before, because of the new rights conferred by Art. 14. The principle was also applied in *Shree Meenakshi Mills Ltd.* v. *Sri A. V. Visvanatha Sastri* (2) *Dhirendra Kumar Mandal* v. *The Superintendent* and *Remembrancer of Legal Affairs to the Government of West Bengal* (3), *Habeeb Mohamed* v. *The State of Hyderabad* (4), *Syed Casim Razvi* v. *The State of Hyderabad* (5) and *Kesavan Madhava Menon* v. *The State of Bombay*(6). These cases are not exactly in point but the principle is there and it is that principle that I invoke here.

On the merits I am clear that the appeal should be dismissed. In the first place, this Court, following the English decisions, has decided in *Manak Lal* v. *Dr. Prem Chand Singhvi*(7) that the principles of natural justice must be observed not only by Courts proper but also by "all tribunals and bodies which are given jurisdiction to determine judicially the rights of parties"; and if they are not observed, the decision is vitiated. So that is now beyond controversy.

Next, there can, I think, be no doubt that the District Superintendent of Police, who conducted the departmental trial and found the respondent guilty, acted in a judicial capacity. The Departmental Rules that require an enquiry in such cases call the proceed-

(1) [1952]S.C.R. 710.
(2) [1955] 1 S.C.R. 787, 798.
(3) [1955] 1 S.C.R. 224, 237.
(4) [1953] S.C.R. 661.
(5) [1953] S.C.R. 589.
(6) [1951] S.C.R. 228.
(7) A.I.R. 1957 S.C. 425, 42 .

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ings a trial and the procedure set out in them indicates the judicial nature of the enquiry. So that condition is also fulfilled.

Then, thirdly, were the principles of natural justice ignored in this case? That also is, I think, settled by authority.

What happened here? The District Superintendent of Police examined a certain witness in the course of the enquiry. It seems that that witness's evidence was considered a vital link in the chain of evidence against the respondent. The District Superintendent of Police reached the conclusion that the witness had turned hostile. He may have been right about that, but he also considered it necessary to refute this evidence and make good the lacuna by bringing other material on record. Apparently, no other witness was available, so the District Superintendent of Police, who seems to have had personal knowledge about the facts, stepped down from the Bench and got his testimony recorded by another authority, once before charge and again after charge, and each time, after that was done, stepped back on to the Bench in order solemnly to decide whether he should believe his own testimony in preference to that of the witness who, in his judgment, had committed perjury and gone back on the truth. It hardly matters whether this was done in good faith or whether the truth lay that way because the spectacle of a judge hopping on and off the bench to act first as judge, then as witness, then as judge again to determine whether he should believe himself in preference to another witness, is startling to say the least. It would doubtless delight the hearts of a Gilbert and Sullivan Comic Opera audience but will hardly inspire public confidence in the fairness and impartiality of departmental trials; and certainly not in the mind of the respondent. Even before the Constitution, departmental trials were instituted to instil a sense of security in the services and inspire confidence in the public about the treatment accorded to government servants. The question in these cases is always :

"Whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt

about the fairness of the administration of justice." (*Manak Lal* v. *Dr. Prem Chand*)(1).

One of the English cases relied on by this Court in the case just cited was the House of Lord's decision in *Frome United Breweries Co.* v. *Bath Justices*(2). At page 600 Lord Atkinson cited an instance which is almost on all fours with the present case. He said:

"It could not possibly have been intended by this statute to authorise a practice which would, I think be inconsistent with the proper administration of justice—namely, that a licensing justice, one of the members of the compensation authority, should, on a given occasion, descend from the Bench, given his evidence on oath and then return to his place upon the Bench to give a decision possibly based on his own evidence."

The matter is, as I said, covered by authority and I need say no more except that, even if it were not, I would have had no hesitation in reaching the same conclusion.

Some question arose about waiver. If the respondent, knowing his rights, had acquiesced in the continuance of the trial despite this defect, then, of course, he would not have been allowed to complain at a later stage. I do not know whether he was represented by counsel in the enquiry or whether if he was not, he was aware that this kind of action vitiated the proceedings; nor do I know whether he protested and took the point in the appeal and revision. Those papers have not been filed. But I do know that waiver is not raised in the grounds of appeal to this Court nor is the point taken in the appellant's statement of the case. As this is a question of fact, I, for one, would not allow it to be urged at this stage.

I would dismiss the appeal.

ORDER.

In accordance with the opinion of the majority, the appeal is allowed.

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(1) A.I.R. 1957 S.C. 425, 429. (2) (1926) A.C. 586.