which is the subject-matter of appeal before us was correct.

It is no doubt true that the Labour Appellate Tribunal recorded a finding in favour of the appellant that in terminating the service of the respondent as it did, the appellant was not guilty of any unfair labour practice nor was it actuated by any motive of victimization against the respondent. That finding, however, cannot help the appellant in so far as the Labour Appellate Tribunal held that the appellant had failed to make out a *prima facie* case for terminating the service of the respondent.

We, therefore, hold that the decision of the Labour Appellate Tribunal refusing permission to the appellant under s. 22 of the Act was correct and this appeal is liable to be dismissed. It will accordingly be dismissed with cost.

*Appeal dismissed.*

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## STATE OF U.P.

*v.*

## MANBODHAN LAL SRIVASTAVA.

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*September 20*

(S. R. DAS, C. J., VENKATARAMA AYYAR, B. P. SINHA, J. L. KAPUR and A. K. SARKAR, JJ.)

*Covernment Servant—Disciplinary proceedings—Enquiry—Show-cause notice under Art.* 311(2) *of the Constitution —Consultation of Public Service Commission—Whether mandatory—Constitution of India, Arts.* 311(2), 320(3)(*c*).

The respondent was an employee under the appellant, the State of Uttar Pradesh, and as it was discovered that he had allowed his private interests to come in conflict with his public duties, a departmental inquiry was held wherein charges were framed against him. He was called upon to submit his written statement of defence and given an opportunity to adduce evidence in support of it. After considering the report of the enquiry, in which the charges were found to be true, the appellant called upon the respondent, under Art. 311(2) of the Constitution of India, to show cause why he should not be demoted and compulsorily retired, and the respondent submitted a written explanation setting out his defence and objecting to the procedure

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adopted at the inquiry. Subsequently, the respondent was given a copy of the report and again called upon to show cause why the proposed penalty of reduction in rank should not be imposed upon him, and he once again submitted a written explanation. In the meantime the State Public Service Commission was consulted by the Government as to the punishment proposed to be imposed, and for this purpose it was supplied with all the relevant material up to the date of the second show-cause notice. The Government finally by an order dated September 12, 1953, *inter alia*, reduced the rank of the respondent with effect from August 2, 1952, and thereupon, the respondent filed petitions under Art. 226 of the Constitution before the High Court challenging the legality of the Government order. The High Court found that though the State Public Service Commission was consulted by the Government it was not supplied with the written explanation submitted by the respondent in answer to the second show-cause notice, and held that the order of the Government was invalid for the reason that the provision of Art. 320(3)(c) of the Constitution had not been fully complied with. On appeal to the Supreme Court additional evidence was sought to be adduced on behalf of the appellant to show that as a matter of fact the State Public Service Commission was consulted even after the submission of the respondent's explanation in answer to the second show-cause notice, but it was found that there was sufficient opportunity for the appellant to place all the relevant materials before the High Court itself:

*Held*, (1) that the additional evidence ought not to be admitted and that the finding of the High Court that there was no consultation with the Commission after the respondent had submitted his explanation in answer to the second show-cause notice, must stand.

It is well-settled that additional evidence should not be permitted at the appellate stage in order to enable one of the parties to remove lacunae in presenting its case at the proper stage, and to fill in gaps. Of course, the position is different where the appellate court itself requires certain evidence to be adduced in order to enable it to do justice between the parties.

(2) that the provisions of Art. 320(3)(c) of the Constitution of India are not mandatory and that they do not confer any rights on a public servant so that the absence of consultation or any irregularity in consultation does not afford him a cause of action in a court of law.

*P. Joseph John* v. *The State of Travancore-Cochin*, (1955) 1 S.C.R. 1011, considered.

*Biswanath Khamka* v. *The King Emperor*, (1945) F.C.R. 99, relied on.

(3) that Art.311 of the Constitution is not controlled by the provisions of Art. 320.

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CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 27 and 28 of 1955.

Appeals from the judgment and order dated the 8th January, 1954, of the Allahabad High Court in Civil Misc. Writ No. 817 of 1953.

*G. C. Mathur* and *C. P. Lal*, for the appellant in C. A. No. 27 and respondent in C. A. No. 28.

*N. C. Sen*, for the respondent in C. A. No. 27 and appellant in C. A. No. 28.

1957. September 20. The following judgment of the Court was delivered by

*Sinha J.*

SINHA J.—These two cross-appeals on certificates granted by the High Court under Art. 132(1) of the Constitution arise out of a common judgment and order of a Division Bench of the High Court of Judicature at Allahabad, in two writ petitions Nos. 121 and 817 of 1953, dated January 8, 1954, allowing in part and dismissing in part, the two petitions, under Art. 226 of the Constitution, by which the petitioner questioned the validity of the orders passed by the Government of Uttar Pradesh, reducing him in rank, and ordering his compulsory retirement from service. Civil Appeal No. 27 has been preferred by the State of Uttar Pradesh and Civil Appeal No. 28 by the petitioner in the Court below. For the sake of brevity, we shall refer to the State of Uttar Pradesh as the appellant and the petitioner in the High Court —Sri Manbodhan Lal Srivastva—as the respondent, in the course of this judgment which covers both the appeals.

It is necessary to state the following facts: In 1920, the respondent was employed in the education department of the State of Uttar Pradesh, and in due course, was promoted to the United Provinces Education Service (Junior Scale). This took place in 1946. In the year 1948, the respondent was appointed an officer-on-special duty and managing editor of a quarterly journal issued by the education department, under the style "Shiksha". While holding the post of officer-on-special duty, the respondent was also

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appointed a member of the Book Selection Committee. He continued to function as such until 1951. The respondent's conduct as a member of that Committee was not found to be satisfactory and above board, inasmuch as it was discovered that he had allowed his private interest to come in conflict with his public duties. He was found to have shown favours in the selection of books on approved list, in respect of certain books said to have been written by a nephew of his, aged only 14 years, and by another relation of his as also to a firm of publishers who had advanced certain sums of money to him on interest. In July, 1952, the respondent was transferred as Headmaster of a certain High School, but he did not join his post and went on leave on medical grounds. While on leave, the respondent was suspended from service with effect from August 2, 1952. In September, the same year, the Director of Education issued orders, framing charges against the respondent and calling upon him to submit his written statement of defence and giving him an opportunity to call evidence in support of it. It is not necessary for the purposes of this case, to set out the charges framed against him except to state that the details of the books said to have been written by his prodigy nephew and his other relation, were given, the gravamen of the charges being that he did not inform the Committee of his relationship with the alleged authors of the books, the selection of which was calculated to bring pecuniary benefit to those relations. Another charge related to his having benefited a certain firm of publishers whose books, about a dozen in number, had been selected by the Committee of which he was a member. The respondent submitted a lengthy written statement in his defence and did not insist on oral examination of witnesses, but enclosed with his explanation certain affidavits in support of his case. The Director of Education, after a thorough inquiry into the charges framed against the respondent, submitted a report to the effect that the charges framed against him had been substantially proved. He recommended that the respondent be demoted to the Subordinate

Education Service and be compulsorily retired. After considering the report aforesaid, the Government decided on November 7, 1952, to call upon the respondent, under Art. 311 (2) of the Constitution, to show cause why the punishment suggested in the departmental inquiry report should not be imposed upon him. In pursuance of the show-cause-notice served upon the respondent on November 13, 1952, he put in a long written explanation on November 26, 1952, on the same lines as his written statement of defence submitted earlier as aforesaid, bearing on the merits of the findings as also objecting to the procedure adopted at the enquiry. He also showed cause against the proposed punishment. A Government notification dated January 9, 1953, was published showing the names of the officers of the education department, who would retire in due course on superannuation, that is to say, at the age of 55, and the corresponding dates of superannuation. The respondent is shown therein as one of those, and in the last column meant for showing the dates of retirement, September 15, 1953, is mentioned as against his name. On February 2, 1953, the respondent filed the first petition (Writ Petition No. 121 of 1953) challenging the validity of the order of the Government suspending him and calling upon him to show cause why he should not be reduced in rank with effect from the date of suspension, and also compulsorily retired. In that petition, he also challenged the legality of the entire proceedings and prayed for a writ of *mandamus* directing the Government to pay his full salary during the period of suspension until he attained the age of superannuation as aforesaid. Perhaps, realising that the show-cause-notice served upon the respondent as aforesaid, in November, 1952 would not fully satisfy the requirements of a reasonable opportunity as contemplated by the Constitution, the Director of Education forwarded to the respondent, along with a covering letter dated June 16, 1953, a copy of the report of the enquiry ; and again called upon him to show cause why the proposed penalty of reduction in rank be not imposed upon him. The State Public

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Service Commission (which we shall refer to as the Commission) was also consulted by the Government as to the punishment proposed to be imposed as a result of the enquiry. Presumably, the Commission was supplied with all the relevant material upto the date of the second show-cause notice. The Commission was consulted but it appears from the findings of the High Court that the respondent's written explanation submitted on July 3, 1953, was not before the Commission. The explanation submitted on July 3, 1953, was a much more elaborate one dealing not only with three charges which had been made against him, but also with other irrelevant findings of the enquiry officer who had made several observations against the respondent's efficiency and conduct, which were not the subject-matter of the several heads of charge framed against the respondent, and therefore, not called for. After considering the opinion of the Commission, the inquiry report and the several explanations submitted by the respondent, the State Government passed its final order dated September 12, 1953, reducing the respondent in rank from the U. P. Education Service (Junior Scale) to Subordinate Education Service, with effect from August 2, 1952, and compulsorily retiring him. The order of compulsory retirement was more or less superfluous as the respondent would have retired in the ordinary course with effect from September 15, 1953, as already indicated. During the pendency of the first writ petition, and after it had been heard by the High Court in part, the respondent filed the second writ application (being Writ Petition No. 817 of 1953) on September 23, 1953, practically covering the same grounds and praying for the same reliefs as aforesaid. A Division Bench of the High Court, presided by the Chief Justice by its judgment and order dated January 8, 1954, disposed of both the writ petitions holding that the orders impugned were invalid for the reason that the provisions of Art. 320(3) (c) of the Constitution had not been fully complied with because the last written explanation of the respondent submitted on July 3, 1953, had not been placed before the Commission

The High Court, therefore, quashed the orders of the Government reducing him in rank and reducing his emoluments with effect from the date of suspension as aforesaid. It did not pass any order in respect of the compulsory retirement because that had happened in due course before the judgment of the High Court. The appellant has filed appeal No. 27 from this part of the judgment and order of the High Court. The High Court refused the respondent's prayer in respect of the full salary for the period of suspension during which he had been deprived of it by the orders of the Government impugned by him. From this part of the judgment, the respondent has preferred appeal No. 28. It is manifest that if the State Government's appeal is well-founded and is allowed by this Court, the respondent's appeal must fail without any further consideration.

Before dealing with the merits of the controversy raised in these appeals, it is necessary to state that Mr. Mathur appearing on behalf of the appellant, proposed to place before this Court, at the time of the argument, the original records and certain affidavits to show that, that as a matter of fact, all the relevant facts relating to consultation between the State Government and the Commission had not been placed before the High Court and that if the additional evidence were taken at this stage, he would satisfy this Court that the Commission was consulted even after the submission of the respondent's explanation in answer to the second show-cause-notice. Without looking into the additional evidence proposed to be placed before us, we indicated that we would not permit additional evidence to be placed at this stage when there was sufficient opportunity for the State Government to place all the relevant matters before the High Court itself. We could not see any special reasons why additional evidence should be allowed to be adduced in this Court. It was not suggested that all that matter which was proposed to be placed before this Court was not available to the State Government during the time that the High Court considered the writ petitions on two occasions.

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It is well settled that additional evidence should not be permitted at the appellate stage in order to enable one of the parties to remove certain lacunae in presenting its case at the proper stage, and to fill in gaps. Of course, the position is different where the appellate court itself requires certain evidence to be adduced in order to enable it to do justice between the parties. In this case, therefore, we have proceeded on the assumption that though the Commission was consulted as to the guilt or otherwise of the respondent and the action proposed to be taken against him after he had submitted his explanation in answer to the first show-cause-notice, there was no consultation with the Commission after the respondent had submitted his more elaborate explanation in answer to the second show-cause-notice.

Hence, the main question in controversy in appeal No. 27 of 1955 is whether the High Court was right in taking the view that Art. 311 was subject to the provisions of Art. 320(3)(c) of the Constitution, which were mandatory, and, as such, non-compliance with those provisions in the instant case was fatal to the proceedings ending with the order passed by the Government on September 12, 1953.

The High Court started with the assumption that the provisions aforesaid of the Constitution are mandatory and on that assumption proceeded to consider the further question whether non-compliance with those provisions by the State Government conferred any right on the respondent to question the validity of the order impugned in this case. In this connection, the High Court found that the Commission had been consulted some time in June, 1953. It has to be assumed as aforesaid, that the Commission had not before it the more elaborate explanation submitted in writing by the respondent on July 3, in answer to the second show-cause-notice. The High Court was further of the opinion that it may be that if that explanation had been placed before the Commission, its advice to the State Government may not have been in the same terms in which it actually gave its advice, and after considering which, along

with other relevant matters, the State Government passed the order now in question. We shall assume for the purposes of this case that there was an irregularity in, though not complete absence of, consultation with the Commission. Now the question is: Did this irregularity afford a cause of action to the respondent to challenge the final order, passed by the State Government on September 12, 1953? That part of the order which related to compulsory retirement may easily be passed over, because, in any case, three days later, on September 15, the respondent retired in due course. Hence, the operative portion of the final order of the Government, which adversely affected the respondent, was the order reducing him in rank from the Provincial to the Subordinate grade. That order appears to have satisfied the conditions laid down in Art. 311 of the Constitution. At no stage of the controversy has it been suggested that, so far as the appellant was concerned, the respondent had not a "reasonable opportunity of showing cause against the action proposed to be taken in regard to him"; that is to say, it is now beyond question that the proceedings taken by the appellant, including the departmental inquiry against the respondent ending with his reduction in rank, satisfied the mandatory provision of Chapter I of Part XIV of the Constitution, with particular reference to Art. 311. That conclusion would put an end to the respondent's case, unless it is held that the provisions of Art. 320(3)(c) are of a mandatory character and are in the nature of a rider to Art. 311. This question does not appear to have been determined by this Court in the form in which it has been now raised before us. In the case of *P. Joseph John* v. *The State of Travancore Cochin* (1), the question of consultation with the State Public Service Commission was raised in slightly different circumstances. After the Government had before it the result of the inquiry into the conduct of the public servant, and after the punishment was tentatively arrived at, the Commission was consulted and it agreed to the proposed action. But this consultation

(1) [1955] 1 S.C.R. 1011.

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and agreement was before the public servant was asked to show cause against the action proposed to be taken against him. His complaint was that the Commission should have been consulted after he had moved the Government for reviewing its previous order, and this Court ruled that it was not incumbent on the Government to consult the Commission as many times as he might choose to move the Government by way of review. In that case, this Court did not discuss and pronounce upon the alleged mandatory character of Art. 320 of the Constitution. Hence it may be taken that we have to determine this controversy for the first time, though according to the strict construction of the words of Art. 320(3)(c), an application for review would be covered by the words "memorials or petitions".

Article 320(3)(c) is in these terms:

320(3) : "The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—

(a) .....

(b) .....

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a Civil capacity, including memorials or petitions relating to such matters;".

Article 320 does not come under Chapter I headed "Services" of Part XIV. It occurs in Chapter II of that part headed "Public Service Commissions." Article 320 and 323 lay down the several duties of a Public Service Commission. Article 321 envisages such "additional functions" as may be provided for by Parliament or a State Legislature. Articles 320 and 323 begin with the words "It shall be the duty .....", and then proceed to prescribe the various duties and functions of the Union or a State Public Service Commission, such as to conduct examinations for appointments; to assist in framing and operating schemes of joint recruitment ; and of being consulted on all matters relating to methods of recruitment or principles in making appointments to Civil Services and on all disciplinary matters affecting

a civil servant. Perhaps, because of the use of the word "shall" in several parts of Art. 320, the High Court was led to assume that the provisions of Art. 320(3)(c) were mandatory, but, in our opinion, there are several cogent reasons for holding to the contrary. In the first place, the *proviso* to Art. 320, itself, contemplates that the President or the Governor, as the case may be, "may make regulations specifying the matters in which either generally, or in any particular class of case or in particular circumstances, it shall not be necessary for a Public Service Commission to be consulted." The words quoted above give a clear indication of the intention of the Constitution makers that they did envisage certain cases or classes of cases in which the Commission need not be consulted. If the provisions of Art. 320 were of a mandatory character, the Constitution would not have left it to the discretion of the Head of the Executive Government to undo those provisions by making regulations to the contrary. If it had been intended by the makers of the Constitution that consultation with the Commission should be mandatory, the *proviso* would not have been there, or, at any rate, in the terms in which it stands. That does not amount to saying that it is open to the Executive Government completely to ignore the existence of the Commission or to pick and choose cases in which it may or may not be consulted. Once, relevant regulations have been made, they are meant to be followed in letter and in spirit and it goes without saying that consultation with the Commission on all disciplinary matters affecting a public servant has been specifically provided for, in order, first to give an assurance to the Services that a wholly independent body, not directly concerned with the making of orders adversely affecting public servants, has considered the action proposed to be taken against a particular public servant, with an open mind; and, secondly, to afford the Government unbiassed advice and opinion on matters vitally affecting the morale of public services. It is, therefore, incumbent upon the Executive Government, when it proposed to take any disciplinary

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action against a public servant, to consult the Commission as to whether the action proposed to be taken was justified and was not in excess of the requirements of the situation.

Secondly, it is clear that the requirements of the consultation with the Commission does not extend to making the advice of the Commission on those matters, binding on the Government, Of course, the Government, when it consults the Commission on matters like these, does it, not by way of a mere formality, but with a view to getting proper assistance in assessing the guilt or otherwise of the person proceeded against and of the suitability and adequacy of the penalty proposed to be imposed. If the opinion of the Commission were binding on the Government, it may have been argued with greater force that non-compliance with the rule for consultation would have been fatal to the validity of the order proposed to be passed against a public servant. In the absence of a such binding character it is difficult to see how non-compliance with the provisions of Art. 320(3)(c) could have the effect of nullifying the final order passed by the Government.

Thirdly, Art. 320 or the other articles in Chapter II of Part XIV of the Constitution deal with the constitution of the Commission and appointment and removal of the Chairman or other members of the Commission and their terms of service as also their duties and functions. Chapter II deals with the relation between Government and the Commission but not between the Commission and a public servant. Chapter II containing Art. 320 does not, in terms, confer any rights or privileges on an individual public servant nor any constitutional guarantee of the nature contained in Chapter I of the Part, particularly Art. 311. Article 311, therefore, is not, in any way, controlled by the provisions of Chapter II of Part XIV, with particular reference to Art. 320.

The question may be looked at from another point of view. Does the Constitution provide for the contingency as to what is to happen in the event of non-compliance with the requirements of Art. 320(3)(c) ? It does not, either in express terms

or by implication, provide that the result of such a non-compliance is to invalidate the proceedings ending with the final order of the Government. This aspect of the relevant provisions of Part XIV of the Constitution, has a direct bearing on the question whether Art. 320 is mandatory. The question whether a certain provision in a statute imposing a duty on a public body or authority was mandatory or only directory, arose before their Lordships of the Judicial Committee of the Privy Coucil in the case of *Montreal Street Railway Company* v. *Normandin* (1). In that case the question mooted was whether the omission to revise the jury lists as directed by the statute had the effect of nullifying the verdict given by a jury. Their Lordship held that the irregularities in the due revision of the jury lists will not *ipso facto* avoid the verdict of a jury. The Board made the following observations in the course of their judgment:

".....The question whether provisions in a statute are directly or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at. The cases on the subject will be found collected in Maxwell on Statutes, 5th ed., p. 596 and following pages. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no contol over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."

The principle laid down in this case was adopted by the Federal Court in the case of *Biswanath Khemka* v. *The King Emperor* (2). In that case, the Federal Court had to consider the effect on non-compliance with the provisions of s. 256 of the Government of India Act, 1935, requiring consultation between public authorities

(1) L.R. [1917] A.C. 170 (2) [1945] F.C.R. 99.

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before the conferment of magisterial powers or of enhanced magisterial powers, etc. The Court repelled the contention that the provisions of s. 256, aforesaid, were mandatory. It was further held that non-compliance with that section would not render the appointment otherwise regularly and validly made, invalid or inoperative. That decision is particularly important as the words of the section then before their Lordships of the Federal Court were very emphatic and of a prohibitory character.

An examination of the terms of Art. 320 shows that the word "shall" appears in almost every paragraph and every clause or sub-clause of that article. If it were held that the provisions of Art. 320(3)(c) are mandatory in terms, the other clauses or sub-clauses of that article will have to be equally held to be mandatory. If they are so held, any appointments made to the public services of the Union or a State, without observing strictly the terms of these sub-clauses in cl. (3) of Art. 320, would adversely affect the person so appointed to a public service, without any fault on his part and without his having any say in the matter. This result could not have been contemplated by the makers of the Constitution. Hence, the use of the word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding, or the outcome of the proceeding, would be invalid. On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissive or directly in the sense that non-compliance with those provisions will not render the proceeding invalid. In that connection, the following quotation from Crawford on 'Statutory Construction'—art. 261 at p. 516, is pertinent :

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained,

not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other.....

We have already indicated that Art. 320 (3)(c) of the Constitution does not confer any rights on a public servant so that the absence of consultation or any irregularity in consultation, should not afford him a cause of action in a court of law, or entitle him to relief under the special powers of a High Court under Art. 226 of the Constitution or of this Court under Art. 32. It is not a right which could be recognized and enforced by a writ. On the other hand, Art. 311 of the Constitution has been construed as conferring a right on a civil servant of the Union or a State, which he can enforce in a court of law. Hence, if the provisions of Art. 311, have been complied with in this case—and it has not been contended at any stage that they had not been complied with—he has no remedy against any irregularity that the State Government may have committed. Unless, it can be held, and we are not prepared to hold, that Art. 320(3)(c) is in the nature of a rider or *proviso* to Art. 311, it is not possible to construe Art. 320(3)(c) in the sence of affording a cause of action to a public servant against whom some action has been taken by his employer.

In view of these considerations, it must be held that the provisions of Art. 320(3)(c) are not mandatory and that non-compliance with those provisions does not afford a cause of action to the respondent in a court of law. It is not for this Court further to consider what other remedy, if any, the respondent has. Appeal No. 27 is, therefore, allowed and appeal No. 28 dismissed. In view of the fact that the appellant did not strictly comply with the terms of Art. 320(3)(c) of the Constitution, we direct that each party bear its own costs throughout.

*Appeal No. 27 allowed.*

*Appeal No. 28 dismissed.*