

POWERS AND FUNCTIONARIES

Section 14. Powers conferred to be exercisable from time to time—(1) Where, by any [Central Act] or Regulation made after the commencement, of this Act, any power is conferred, then, [unless a different intention appears], that power may be exercised from time to time as occasion requires.

(2) This section applies also to all Central Act and Regulations made on or after the 14 January 1887.

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1. SCOPE

Unless a contrary 'intention' appears, the power under this section can be exercised from time to time.¹ This section, thus, deals with the exercise of power from time to time as occasion arises² successively, and has no relevance to the question whether the power claimed can at all be exercised,³ though a given power can be exercised in such mode alone as has been prescribed.⁴ Thus, this section cannot be made use of in support of the argument that a subsequent notification can be issued without complying with the conditions which attach to the issuance of such original notification. For instance, sub-s (1) of s 43 of the Motor Vehicles Act 4 of 1939 empowers the state government to

1 *Himangshu Kumar v LIC of India* 1979 Lab IC 1417 (DB) (Cal).

2 *State of Maharashtra v Narayan Sham Rao Puranik* AIR 1982 SC 1198, 1982 UJ 368 (SC), (1982) 2 SCC 440, continued in AIR 1983 SC 45.

3 *Gour Chandra Rout v Public Prosecutor, Cuttack* AIR 1963 SC 1198, (1963) 2 Cr LJ 194.

4 *Gujarat Electricity Board v Girdhari Lal* AIR 1969 SC 267-8, 270, (1969) 1 SCJ 364; relying on *Ballabhdas Agarwala v JC Chakravarti* AIR 1960 SC 576; *Nazir Ahmed v King Emperor* AIR 1936 PC 253.

issue, from time to time, notifications giving directions to the state transport authority, but the proviso to that sub-section has also laid down the conditions subject to which a notification can be issued. Whether it is an original notification or a subsequent notification, the state government, whenever and for whatever number of times it chooses to issue a notification giving directions to the state transport authority, must essentially comply with the conditions as have been laid down under the proviso to sub-s (1) of s 43 of the Motor Vehicles Act providing for the issue of such notification or notifications from time to time.⁵ A motor vehicle of the Union of India would continue to be taxed under the existing state laws at the time of commencement of the Constitution if actually such taxes were being imposed during the pre-constitution period.⁶

No law conferring a power need say in so many words that such power may be exercised from time to time. Even if a law makes use of such expression, the position is still the same.⁷

The section would apply to construe power under art 309 of the Constitution of India, in the matter of rules framed thereunder. This power, it has been held,⁸ would apply, as is clear from the proviso to that article, not only to the rules made for the first time under that article but to all such rules as have been made from time to time.

Since it is not possible to say that the whole of any Act must be brought into force on one date by one notification,⁹ it is permissible to issue successive notifications for the purpose of bringing an Act into force in the whole of the territory.¹⁰

In an Act of Parliament, unless there is anything repugnant in the context or object, words in the singular include the plural and a power conferred on an authority can be exercised from time to time as the occasion arises,¹¹ in accordance with the provisions of law which have granted such power.¹² Therefore, although the word 'permit' is used in the singular in sub-s (1C) of s 68F of the Motor Vehicles Act 1939, the transport authority will have jurisdiction to grant any number of temporary permits as and when the occasion for the grant arises.¹³ All this is subject to the condition that power, if exercised on a second occasion, has to be exercised in accordance with provision of law conferring such power.¹⁴

5 *Gauhati Tpt Assn v State of Assam* AIR 1978 Gau 33, 47; s 21.

6 *Union of India v State of Punjab* AIR 1990 P&H 183.

7 *Life Insurance Corpn of India v DJ Bahadur* (1981) 1 SCC 315.

8 *SVG Iyengar v State of Mysore* AIR 1961 Mys 37, 41, Mys LJ 828 (DB).

9 *Thakur Amar Singhji v State of Rajasthan* AIR 1955 SC 504.

10 *Vasant Lal Maganbhai v State of Bombay* AIR 1961 SC 4.

11 *National Sewing Thread Co Ltd, Chidambaram v James Chadwick & Bros* AIR 1953 SC 357, 360; *AO & A Co Ltd v Entry-tax Officer* AIR 1984 Cal 140.

12 *Mohan Lal Gupta v State of Punjab* (1965) 67 Punj LR 1050, 1052.

13 *Dhanna Singh v Regional Tpt Authority, Gwalior* AIR 1975 MP 77, 1974 MP LJ 922.

14 *ML Gupta v State of Punjab* 1965 Cur LJ 669, (1965) 67 Punj LR 1050.

Reading this section and s 1(3) of the Tripura Land Revenue and Law Reforms Act 1960 together, it permits the administrator the discretion to appoint different dates for different areas and different provisions which means that he can bring the Act into force piecemeal, to suit local conditions and administrative convenience and, that separate notifications can be issued extending the various provisions to various areas of the Act. Not only is there no different intention in the Act, but the latter part of s 1(3) indicates that notifications can be issued in succession. Such notifications have been held valid.¹⁵

The section would contemplate correspondence in the matter of operation of any Act through a notification whether in part or in whole of any particular area. When a notification issued under an Act does not specify any particular area to be covered by it, the construction by implication would mean that the notification operates throughout the area to which the Act extends.¹⁶

2. GENERAL APPLICATION OF SECTION

The section would apply when there is no different intention¹⁷ in the relevant Act or regulation. Examples of different intention have been noted in *Nasiruddin v State Transport Appellate Tribunal*.¹⁸

Section 14 was held applicable to s 223A of the Government of India Act 1935 (as applicable to Pakistan) in construing it as conferring wider jurisdiction on the High Court in matters involving the writ of mandamus.¹⁹

The effect of s 3 of the Preventive Detention Act, read with s 14 of the General Clauses Act, is that the power to make detention orders is not exhausted after it has been once exercised but can be exercised from time to time whenever necessary. The amended s 13 has been added from excessive caution or to cover cases where fresh facts have arisen after the revocation or expiry of the previous detention order. The change in phrase effected by the amendment does not necessarily imply a change in meaning or the provisions.²⁰

15 *Sambu Katan Tewari v Administrator and Chief Commr of Tripura* AIR 1963 Tri 1.

16 *Ram Deo Onkarnal Firm v State of Uttar Pradesh* AIR 1981 SC 1582, 1584, 1981 Cr LJ 1309, 1981 All LJ 850.

17 *Katradagga Lakshminadharao Naidu v Special Officer, Rent Reduction, Board of Revenue, Andhra Pradesh* AIR 1960 AP 560, 562 (FB).

18 AIR 1976 SC 331, 340 (proviso to para 14 of Uttar Pradesh High Courts (Amalgamation) Order 1948); reversing *Nirmal Dass Khaturia v State Tpt (Appellate) Tribunal, Uttar Pradesh* AIR 1972 All 200 (DB).

19 *Lakhan v Crown* 1955 Pak LD (Lah) 215, AIR 1955 NUC (Pak) 5805.

20 *Hadibandu Das v District Magistrate, Cuttack* 34 Cut LT 420, 1968 Cr LJ 1096, AIR 1968 Ori 148.

Even when a statute does not expressly use the words 'from time to time', the power given thereunder is not exhausted as soon as it is exercised once.²¹ The annulment or revocation of a decision, which has become final, is not authorised by this section.²² The section, however, empowers the government to create a new trust or reconstitute a trust already dissolved.²³

A court is empowered under O 26, r 9 to issue a commission for local investigation when it deems it to be requisite for elucidating a matter in dispute and this conferment of power enables it to issue a second commission if elucidation obtained as a result of first report appears unsatisfactory.²⁴

It has been held that under Pt 2, Ch 3, r 3(2), Refixation of Sites (Assam Forest Regulation) 1891, the deputy commissioner may on his own motion, or on the motion of other persons having *khutis* or *bathanas* contiguous to the fixed *khutis* of a set of *graziers*, may also order them to shift the site of *khutis*, the rule itself not prohibiting, in express terms or by necessary implication or intendment, the refixation or the alteration of the sites of *khutis*, or *bathanas* during the currency of permit.²⁵

Fixation of agricultural rents depending, as it does, on so many factors, would naturally mean that the rents vary not only from time to time, but also from place to place.²⁶

Section 12(6) of the Uttar Pradesh Varanaseya Sanskrit Vishwavidyalaya Act 1956 permits successive orders.²⁷

Section 6(1)(a) of the Electricity Act empowers the electricity board to interfere with the property rights of the licensee. The notice must specifically call upon the licensee to sell the undertaking. The exercise of option to purchase and the election of option to purchase are one integral process. That is why the Parliament deliberately changed the form of notice to be given from what it was before the Act was amended by Act 32 of 1959. Where the notice merely stated that the board has decided to exercise and shall exercise the option of purchasing the undertaking, the notice is invalid. On reading the notice, the licensee could not have been definite as to whether the Board purported to exercise the law as it was on the date of the notice or under the unamended Act. Section 14 of the General Clauses Act does not help.²⁸

21 *Chiman Lal v State* AIR 1954 Bom 397 (power to issue notification, under s 6(1) of Bombay Tenancy and Agricultural Lands Act 1948).

22 *State v Kunna Kudi Melamatam* AIR 1965 SC 1570 (with reference to s 13 of Madras General Clauses Act 1891).

23 *State v Mohan Lal* (1969) 3 SCC 484.

24 *P Subramaniam v KSE Board* AIR 1988 Ker 169, 174.

25 *Sandhiram Mahajan v Dy Commr, Kamrup* AIR 1953 Assam 168.

26 *Vasantlal Maganbhai v State of Bombay* AIR 1961 SC 4, 9-10, (1961) 1 SCJ 394; overruled on another point in *Prag Ice and Oil Mills v Union of India* AIR 1978 SC 1296.

27 *Chancellor v Jagdish Narayan* AIR 1969 All 378.

28 *Gujarat Electricity Board v Girdharlal Motilal* 10 Guj LR 366, (1969) 1 SCA 283, (1969) 1 Um NP 196, (1969) 1 SCJ 364, AIR 1969 SC 267.

Every shareholder of equity capital must on a poll have a voting right in proportion to his share of the paid-up equity capital of a company. Section 9 of the Companies Act says that nothing in ss 87-90 would affect any voting rights attached to shares issued before the commencement of the Act, save as provided for in s 89. In considering the voting rights of deferred shareholders, the court would be bound to give effect to the saving provisions. The power of exemption under s 89(4) can be exercised only once and finally and there is no right of revocation once granted. It could never have been intended that the rule of construction in s 21 of the General Clauses Act should be applicable to the power of exemption vested in the Central Government under s 89(4). It is not permissible for the Central Government, having regard to the provisions of s 14 of the General Clauses Act from time to time, to pass and revoke orders of exemption under s 89(4).²⁹

With reference to ss 61 and 86 of the Travancore Cochin Co-operative Societies Act 1952, it is not competent for the government to review its own order passed in revision.³⁰ Section 62 of the Andhra Pradesh Panchayat Samitis and Zila Parishads Act 1956, confers power on the government to cancel or suspend any resolution of a Panchayat or Panchayat Samiti, but once that power is exercised, the Act does not confer any further power to review the order cancelling or superseding any such resolution.³¹

With reference to s 12 of the Punjab General Clauses Act 1898, the government has the power to create a new, or reconstitute an existing, trust.³²

Consult also the decision of the Supreme Court in *Express Newspapers Ltd v Union of India*.³³

3. APPLICABILITY TO RULES MADE UNDER ENACTMENTS

The Supreme Court, in *State of Uttar Pradesh v Babu Ram*,³⁴ after quoting the statement of law in Maxwell,³⁵ has held that the rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act and are to be judicially noticed for all purposes of construction or obligation.

29 *Nava Samaj Ltd, Nagpur v Registrar of Companies, Bombay* 67 Bom LR 362, 1965 Mah LJ 349, (1965) 11R 807 Bom, (1965) 1 Com LJ 337, AIR 1966 Bom 218.

30 *Paul Averthan v Sankaran Balakrishnan* 1961 Ker LT 728, 730.

31 *Gaddie Venkateswara Rao v Government of Andhra Pradesh* AIR 1966 SC 828, (1966) 2 SCJ 270.

32 *State of Haryana v Mohan Lal* (1969) 3 SCC 484, 488.

33 AIR 1958 SC 578.

34 AIR 1961 SC 751, [1961] 2 SCR 679.

35 *Interpretation of Statutes*, 10th edn, pp 50-51.

The state transport appellate tribunal can, therefore, under r 147, proviso, and r 148A of the rules framed under the Motor Vehicles Act 1939, return a memorandum of appeal as well as grant extension of time for production of the certified copy of the impugned order. Such power of return and extension of time can be exercised as often as necessary, since it is well-known that it is the common practice for a number of returns to be made and such practice has never been questioned, since this matter is apparently governed by s 14 of the General Clauses Act.³⁶

Section 14 was held applicable³⁷ to the notification issued by the President under s 51(2) of the States Reorganisation Act 1956, conferring certain powers on the chief justice of the Madhya Pradesh High Court, which powers, it was held, could be exercised by the chief justice from time to time. Section 14 was applied also to cases of different dates appointed for resumption of different classes of *jagir* lands in Rajasthan.³⁸

4. DELEGATED POWERS

When powers have been validly delegated to an authority, that authority can, in view of ss 14 and 21 of the General Clauses Act, amend its orders passed in exercise of such delegated powers.³⁹

In cases of delegation of powers both, the authority which delegates and the authority in whose favour the delegation is made, possess concurrent jurisdiction in the field of the particular powers, and delegation does not imply an abdication of powers on the part of the authority delegating its own powers.⁴⁰ So long as the authority so delegated had not been exercised by the authority to whom it was so delegated, the power still remains with the original authority and no question of jurisdiction of the original authority could at all arise.⁴¹ When powers vested in the provincial government, under s 15 of the Madras Maintenance of Public Order Act 1947, had been delegated by order of the governor, to all the district magistrates and commissioners of police within the exercise of their respective jurisdictions, such delegation, it was held,⁴² did not deprive the government of its power under s 2(1) of the Madras Act 1947.⁴³

36 *Shannugham Tpts v Kunju Chettiar* AIR 1971 Mad 37.

37 *Abdul Taiyab v Union of India* AIR 1977 MP 116, 1976 MPLJ 706 (FB).

38 *Amar Singhji v State of Rajasthan* AIR 1955 SC 504, (1955) SCJ 526 (s 21(1) of Rajasthan Land Reforms and Resumption of Jagirs Act 1952, not discriminatory).

39 *Subbaryadu v State of Andhra Pradesh* (1975) 2 Andh WR 437, 452 (DB) (delegation of powers to state government under s 5 of the Maintenance of Internal Security Act 1951).

40 *Vasantha Pai v CK Ramaswami* AIR 1978 Mad 342, 350-51.

41 *Ibid.*

42 *P Ramiah v Chief Secretary* AIR 1950 Mad 100, 51 Cr LJ 424, (1949) 2 Mad LJ 61 (DB).

43 *Appeal Committee of Ankapalli Municipality v Commr of Ankapalli Municipality* AIR 1964 AP 357, (1964) 1 Andh WR 29.

The Supreme Court holds⁴⁴ that by leaving the decision of the question of the compulsory retirement of a district judge to the administrative committee of judges, the High Court cannot be said to have abdicated its own powers.

Section 15. Power to appoint to include power to appoint *ex officio*—Where, by any [Central Act] or Regulation, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office.

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1. GENERAL SCOPE AND ANALOGY OF SECTION

The general provision contained in this section is designed to empower the appointment of persons required to fill any office or execute any function under any central Act to be made either by name or by virtue of office.⁴⁵ As per the provisions of this section, there is no bar to the appointment of *persona designata* by official designation. Thus an appointment by official designation of certain categories of officers to function as presiding officers of the motor accidents claims tribunal in pursuance of a notification issued under the Motor Vehicles Act 1939,⁴⁶ is not invalid provided the persons falling in that category are qualified to be appointed as presiding officers of the tribunals. In case one or two persons out of that category appointed by designation are not to qualified, the notification as a whole is not vitiated but only the appointment of any particular officer, not holding the requisite qualification, may be rendered invalid.⁴⁷ The principle of s 15 of the General Clauses Act is helpful in holding that where there is a power to appoint a person to execute certain functions, such appointment may be made by name or office, and the authority to a designated class of officers is not

44 *State of Uttar Pradesh v Batuk Deo* 1978 All LJ 477, 1978 Lab IC 839, 846, 1978 UJ 237 (SC), reversing *Batuk Deo Pati Tripathi v State of Uttar Pradesh* AIR 1977 NOC (All) 279.

45 *Public Prosecutor v Narkidimili* AIR 1960 AP 282.

46 Now, Motor Vehicles Act 1988.

47 *New India Insurance Co Ltd, Bombay v Mahi Devi* AIR 1969 MP 190, 1969 Jab LJ 238, 1969 MPLJ 237, 1969 MPWR 226, 1969 ACJ 164.

invalid.⁴⁸ Thus, the word 'person' used in r 126(2) of the Defence of India Rules is wide enough to cover a person described by his office.⁴⁹

Appointment in anticipation of vacancy, and appointment of one to exercise the powers of another, are within the purview of this section.⁵⁰

Section 15 will apply where the state government has to confer power either generally or specially.⁵¹ Thus the principle embodied in this section can be relied upon to hold that where a power to appoint any person to execute any function is conferred, such appointment may be made either by name or by virtue of office.⁵² Rules 126L, 126M, and 126P of the Gold Control Rules⁵³ embodied in Ch 12A of the Defence of India Rules 1962, do not, therefore, suffer from the vice of excessive delegation of legislative power.⁵⁴

An analogy of this section may be found in s 32(1) of the Code of Criminal Procedure 1973 (2 of 1974) providing as follows:

In conferring powers under this Code, the High Court or the state government, as the case may be, may by order, empower persons specially by name or [by] virtue of their offices or classes of officials generally by their official titles.



2. APPOINTMENTS IN GENERAL

A general authority to act in all cases or in a class of cases is a familiar form of authorisation to an agent or an officer.⁵⁵ When power has been conferred to appoint a person to execute any function, such appointment can be made either by name or by virtue of office,⁵⁶ though, as a general rule, no person can be appointed by office unless express authority to that effect is conferred by the law under which the appointment is made.⁵⁷

48 *Thankappan Achari v Union of India* 1972 Ker LT 456.

49 *Ibid.*

50 *Gulam Nabi v AN Sonanki* (1968) 8 Guj LR 265.

51 *Sabuddin v JS Thakur* AIR 1969 Guj 1 (FB), 9 Guj LR 143.

52 *Municipal Council, Akola v Shripat Ganesh Lal* 1973 Cr LJ 1490, 1492, 1973 Mah LJ 399 (appointment of sanitary inspectors as food inspectors, under s 9 of the Prevention of Food Adulteration Act 1954, made by office, held valid); *Sindhi Lohana Choitram Parasram v State of Gujarat* AIR 1967 SC 1532-34, 1967 Cr LJ 1396, (1968) 1 SCJ 453 (power to issue search warrant, under s 6 of Bombay Prevention of Gambling Act 1887, conferred on person by office); approving *Emperor v Savalram Kashinath Joshi* AIR 1948 Bom 156, 49 Bom LR 798; overruling *Emperor v Udo* AIR 1943 Sind 107, 49 Cr LJ 502; *Kali Kumar Banerji v State of Bihar* 1966 Bih LJR 52, 54.

53 Now repealed.

54 *Jayantilal Amritlal v Union of India* AIR 1970 Guj 108, 11 Guj LR 208.

55 *Subbayyan Muthukomaran v State of Kerala* AIR 1968 Ker 330, 333.

56 *Jayanti Lal Amritlal v Union of India* AIR 1970 Guj 108, 117, 11 Guj LR 208 (DB) (r 126L(2) in Pt 12A of the Defence of India Rules 1962).

57 *Public Prosecutor, Andhra Pradesh v Narkidimilli Srirambhadrayya* AIR 1960 AP 282, 285.

The Food Adulteration Act need not specifically authorise any person by virtue of his office as food inspector because in construing s 15 of the General Clauses Act, the sanitary inspectors would be deemed to be a class of officers generally by their official titles.⁵⁸ The general authorisation in favour of inspectors to institute prosecutions for offences under Prevention of Food Adulteration Act even prior to the amendment of s 20(1) by means of the notification by Kerala Government, dated 7 September 1959, is valid, since it is in consonance with s 15 of the General Clauses Act.⁵⁹ Such general appointment differs from appointment as *persona designata*, which is appointment of a person as an individual as opposed to a person as a member of a class.⁶⁰

It is not necessary that appointment of election officer under Bihar Panchayat Election Rules, should be by name; and it is proper to appoint block development officers by name to function as election officers.⁶¹

Food inspector authorised by Belgaum Borough Municipal Council to institute prosecutions under s 20(1) of the Prevention of Food Adulteration Act, denotes general authorisation.⁶²

A notification by official designation appointing a judge of the small causes court, Delhi, as a tribunal under the Motor Vehicles Act 1939, is not invalid.⁶³

When a statute merely prescribes an authority competent for the purpose of filing a complaint or institution of a prosecution, a general authority in favour of an officer or class of officers with regard to offences covered by the same Act would be held valid.⁶⁴

The 'person to be authorised' under s 20(1) of the Prevention of Food Adulteration Act can be a person who is authorised by virtue of his designation or the office he holds. Hence, a general authorisation of all the food inspectors in the form of a resolution by a municipal council has been held valid.⁶⁵ Similarly, an authority under s 20 of the Minimum Wages Act need not be appointed by name. He may be appointed only by office.⁶⁶

58 Ibid; *S Janardhana Rao v K Paul Reddy* 1983 Cr LJ 248 (AP).

59 *Subbayan Muthukomaran v State of Kerala* (1968) ILR 2 Ker 55, 1968 Ker LJ 525, 1965 Cr LJ 1554, 1968 KLT 909, 1969 Mad LJ 272 (Cr), AIR 1968 Ker 330; *Food Inspector v Gopalan* 1969 KLT 631, (1969) ILR 2 Ker 114, 117-18 (appointment as food inspectors may be made of particular individuals by name or of incumbents of particular office as sanitary or health inspectors).

60 *Land Acquisition Officer v Mst Rahim Rai* AIR 1971 Ori 71, 74, (1970) 36 Cut LJ 1063 (FB).

61 *Ashiq Hasan Khan v Sub-Divisional Officer* AIR 1965 Pat 446.

62 *Laxman Sita Ram Pai v State of Mysore* AIR 1967 Mys 33, (1966) 1 Mys LJ 569.

63 *New Asiatic Tpt Pvt Co Ltd v Manohar Lal* (1965) ILR 2 Punj 751.

64 *Om Swarup v State* 1970 All WR 86, 1970 All Cr R 57.

65 *State of Mysore v Danjaya* AIR 1965 Mys 157, (1963) 1 Cr LJ 785.

66 *Malabati Tea Estate v Budri Munda* AIR 1950 Tri 16; *Lakshman Sitarami Pai v State of Mysore* AIR 1967 Mys 33; *Food Corp'n of India, Madras v Arumugam* AIR 1966 Mad 194; *Subbayan Muthukomaran v State* AIR 1968 Ker 330.

On a consideration of ss 2(1) and 13(1) of the Immoral Traffic (Prevention) Act 1956, it is clear that the special officer under the Act must be a police officer and the appointment may also be by designation and not by name, as provided for under s 15 of the General Clauses Act.⁶⁷

When a special judge is appointed to try an offence under s 165, IPC, the sessions judge or assistant additional judge or assistant sessions judge may be appointed by virtue of his office and not necessarily by name as per s 15 of the General Clauses Act.⁶⁸ It provides that a power to appoint any person to fill any office or execute any function can be conferred either by name or by virtue of office and as such appointment of members of the claims tribunal under the Motor Vehicles Act, conferring powers to all district judges and additional district judges, is valid.⁶⁹

A resolution passed by a municipal council authorising a certain municipal prosecutor to institute prosecutions under the Prevention of Food Adulteration Act is a valid authorisation under s 20(1) of the Act.⁷⁰

When sanction to prosecute could be given only by the district magistrate, the inspector of supplies had no authority to report in respect of offence under s 15 of the Rice Milling Industry (Regulations) Act 1958.⁷¹

Where the State of Madras, in consultation with and with the concurrence of the High Court, issued a notification appointing district magistrates generally by virtue of their office as assistant sessions judges, it was held that such appointment was perfectly valid and did not violate the provisions of art 233 of the Constitution, and that even with regard to the successors it was valid as it was issued after consultation with the High Court, as under s 18, General Clauses Act, it is sufficient for the purpose of indicating the relation of a law to the successors of any functionary or corporation having perpetual succession, to express its relation to such functionary or corporation.⁷²

So also, in view of the provisions of this section, the Central Government can, under s 3(a) of the Public Premises (Eviction of Unauthorised Occupants) Act 1958, notify in the *Official Gazette* the appointment of gazetted officers as estate officers under the Act.⁷³

67 *Rasiklal Manilal v State of Gujarat* 1967 Cr LJ 1105 (Guj).

68 *Adikand Satpathy v State* 1967 Cr LJ 388, 82 Cut LT 917, AIR 1967 Ori 31.

69 *Anirudh Prakash Ambasta v State of Bihar* AIR 1990 Pat 49, 54.

70 *Laxman Sitaram Pai v State of Mysore* (1966) 1 Mys LJ 369, AIR 1967 Mys 33, (1966) 5 LR 745.

71 *State of Orissa v Bisram Patel* AIR 1965 Ori 159, 31 Cut LJ 269.

72 *Re Palanisamy Chettiar* AIR 1957 Mad 351; *Public Prosecutor v Shaikh Sharif* AIR 1965 AP 372.

73 *Amulya Chandra v State Officer* AIR 1964 Tri 9 (for appointment by virtue of office); *A Hussain Tayabali v State of Gujarat* AIR 1968 SC 432; *Okram Kullo Singh v Election Commr* AIR 1968 Mani 84 (a general authorisation in favour of a particular class of officers to act appears however, to be valid); *Subbayyan Muthukumaran v State of Kerala* AIR 1968 Ker 330 (there seems to be no bar to the appointment of any *persona designata* by official designation); *New India Assurance Co, Bombay v Malia Devi* AIR 1969 MP 190; *State of Tripura v Asha Ranjan Saha* AIR 1930 Tri 1.

The appointment of the district election officer as the electoral registration officer in exercise of the powers conferred is valid under s 13A(1) of the Representation of the People Act 1950. Such appointment can be made by name or office.⁷⁴

On supersession of a municipality under the Bengal Municipal Act 1932 (as applicable to Tripura) the administrator appointed a person as a sanitary inspector and empowered him to act as food inspector. When the inspector was prosecuted for taking bribe, it was held that the administrator was competent to give sanction under s 6(1)(c) of the Act. Under s 5 of the General Clauses Act, sanitary inspectors could be appointed by virtue of their office and it was not necessary that their appointments should be made by their names. The mere delegation of powers to the sanitary inspector to be exercised as food inspector does not take away the power of the administrator to dismiss him.⁷⁵

3. SPECIAL APPOINTMENTS

A police officer in charge of a division can be appointed as a special police officer for the purposes of a special Act.⁷⁶

A chief group officer of a certain bank was appointed to act as liquidator of a co-operative society. After he ceased to be the chief group officer, another person, who succeeded him assumed the functions of the liquidator. The objection that the latter was not appointed as liquidator was overruled in *Rajdarkhan Jabbarkhan v Rambhau Narayan*.⁷⁷

As required by the Land Acquisition (Companies) Rules 1963, framed under the Land Acquisition Act 1894, the state government had appointed a land acquisition committee before it issued a notification under s 4. One, DK Master, had worked as a special land acquisition officer at Baroda from 6 December 1961 to 29 April 1965. On February 11, he was appointed to officiate as special land acquisition officer, Baroda. On 1 October 1963, the government wrote a letter directing him to hold an inquiry upon an application moved to the government requesting it to acquire certain lands. The letter purported to state that he was authorised separately to perform the functions of the collector and that on such authorisation, he would be competent to make the inquiry. On the same day, the government issued a notification under s 3(c) authorising him to perform the functions of collector within the District of Baroda. However, on 11 October 1963, the government issued another notification superseding the notification of 1 October 1963 and authorising all special land acquisition officers in the

74 *Okram Kullo Singh v Election Commr* AIR 1968 Mani 84.

75 *State of Tripura v Ashu Ranjan Saha* 1970 Cr LJ 69, AIR 1970 Tri 1.

76 *State of Gujarat v Bai Kadha* (1968) 9 Guj LR 278, (1967) ILR Guj 1046, 1054.

77 AIR 1955 Nag 262-63, 1955 Nag LJ 649 (DB).

state to perform the functions of collector under the Act within the area of their respective jurisdiction. On 10 October 1963, the said DK Master had addressed letters to the persons concerned to supply him the information in connection with the inquiry in his hand. On 22 October 1963, he issued notices to 27 owners of the land proposed to be acquired but only 10 of them had appeared before him and he recorded their statements on 31 October 1963. There was, thus, no doubt about the fact that DK Master was instructed by the state government to hold an inquiry and to submit his report.

A one-man claims tribunal under s 110 of the Motor Vehicles Act 1939 can be created by designation.⁷⁸

It is in this context that the expression 'specially appointed' came to be interpreted by the Supreme Court in *Abdul Hussain Tayabali v State of Gujarat*.⁷⁹

The contention was that, though DK Master held the inquiry and made the report, he had functioned not as collector but in his capacity as the special land acquisition officer, and therefore, the notifications under ss 4 and 6 were invalid. The argument was that r 4 does not define the word 'collector' and, therefore, the word 'collector' must mean the Collector of the District. Secondly, that even if DK Master was appointed as collector as defined by s 3(c), his appointment as collector was not valid as he was not appointed to perform the functions of the collector. It was said that the notification, dated 11 October 1963, did not specially appoint DK Master but was a general notification authorising not only DK Master but all the special land acquisition officers in the state appointed not only before the date of the said notification under s 4 but those who would be appointed in future as well. The argument, therefore, ultimately resolved itself to what is the true meaning of the words 'specially appointed'.

Speaking through JM Shelat J (as he then was), the court held:

...In our view those words simply mean that as such an officer is not a collector and cannot perform the functions of a collector under the Act, he has to be 'specially appointed', that is, appointed for the specific purpose of performing these functions. The word 'specially' has, therefore, reference to the special purpose of appointment and is not used to convey the sense of a special as against a general appointment. The word 'specially' thus connotes the appointment of an officer or officers to perform functions which ordinarily a collector would perform under the Act. It qualifies the word 'appointed' and means no more than that he is appointed specially to perform the functions entrusted by the Act to the collector. It is [the] appointment, therefore, which is special

78 *Hira Lal v Sharbati Devi* (1966) 68 Punj LR (D) 51, (1965) ILR 2 Punj 751, 757-59.

79 AIR 1968 SC 432, 9 Guj LR 243, (1968) 2 SCJ 425, [1968] 1 SCR 597.

and not the person from amongst several such officers. Besides, section 15 of the General Clauses Act provides that where a central Act empowers an authority to appoint a person to perform a certain function, such power can be exercised either by name or by virtue of office. There would, therefore, be no objection if the appointment is made of an officer by virtue of his office and not by his name. Therefore, even if the meaning of the word 'specially' were to be that which is canvassed...the government could have issued separate notifications for each of the special land acquisition officer authorising them individually to perform the functions of the collector within their respective area of jurisdiction. Instead of doing that, if one notification were to be issued authorising each of them to perform those functions there could be no valid objection. Such a notification would have the same force as a separate notification in respect of each individual special LA officer. Such a notification would mean that the government thereby appoints each of the existing special LA officer to perform the functions of the collector within their respective areas...

The court also found that the distinction between appointing one as collector and authorising one to perform functions of the collector was without any difference.

Empowerment of a listed second class magistrate to try cases under the Opium Act was held to be special empowerment within the meaning of s 39 of the Criminal Procedure Code 1898 (s 32 of the Code of 1973).⁸⁰

When a predecessor subordinate judge had been appointed assistant sessions judge, his successor, unless appointed in the same capacity as assistant sessions judge, cannot try a sessions case.⁸¹

The power conferred by name or by virtue of office empowers the individual, specially as holder of office for the time being, to issue search warrants under s 6 of the Bombay Prevention of Gambling Act 1897.⁸²

Section 16. Power to appoint to include power to suspend or dismiss—Where, by any [Central Act] or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having [for the time being] power to make the appointment shall also have power to suspend or dismiss any person appointed [whether by itself or any other authority] in exercise of that power.

80 *Allaga Pillai v Emperor* AIR 1924 Mad 256, 24 Cr LJ 846 (DB).

81 *Re Shaik Silar* AIR 1941 Mad 681, 1941 Mad WN 62.

82 *Sindhi Lohana Choitram Parasram v State of Gujarat* AIR 1967 SC 1532-34; approving *Emperor v Savalram Kashinath Joshi* AIR 1948 Bom 156, 49 Cr LJ 165, 49 Bom LR 798; overruling *Emperor v Udho* AIR 1943 Sind 107, 44 Cr LJ 502 (DB).

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1. POWER UNDER THE SECTION

(a) Power to Terminate—Necessary Adjunct of Power to Appoint

It is now firmly established that the power to terminate service is a necessary adjunct of the power of appointment and is exercised as an incident to or consequence of that power,⁸³ though reinstatement of an employee may not necessarily follow whenever the termination of service is declared to be a nullity.⁸⁴ The power to terminate flows naturally and as a necessary sequence,⁸⁵ from the power to create. This power cannot be delegated to an authority subordinate to the appointing authority.⁸⁶ In other words, the authority to call such officer into being necessarily implies the authority to terminate his functions.⁸⁷ An implied power would really be in conformity with s 16, since the law abhors a vacuum and looks forward to tracing some valid source of power for the working of institutions.⁸⁸ However, the power to make rules would also include within it the power of dismissal.⁸⁹ Again, when an appointment to be valid requires its confirmation by an

83 *Lekhraj Satramdas Lalvani v Dy Custodian-cum-Managing Officer* [1966] 1 SCR 120, AIR 1966 SC 334; *Kutoor Vengayil Rayarappan Nayanar v Kutoor Vengayil Madhvi Amma* 1949 FCR 667, AIR 1950 FC 140; overruling *Anthony Ullysess John, Major v Agra United Mills* AIR 1931 All 72; *Eastern Mortgage and Agency Co Ltd v Premananda Saha* AIR 1916 Cal 824; *Ramaswami Naidu v Ayyalu Naidu* 46 Mad LJ 196, AIR 1924 Mad 614; *Surendra v Nagar Chand* 25 Pat 779, AIR 1947 Pat 418; *Dr Bool Chand v Chancellor, Kurukshetra University* AIR 1968 SC 292, 295-96, 1968 Lab IC 232. (1968) 2 SCJ 171 (wrt s 4 of the Punjab General Clauses Act 1898).

84 *Indian Institute of Technology v Mangat Singh* 1974 Lab IC 891, 894-95, 75 Punj LR (D) 297 (FB).

85 *Management of Delhi Tpt Undertaking v BBL Hajley* (1971) ILR 1 Del 568 (FB) 1972 Serv LR 299, (1971) ILR 1 Del 568 (FB).

86 *Ibid.*

87 *Heckett Engineering Co v Workmen* AIR 1977 SC 2257, 1977 Lab IC 1843, (1977) 4 SCC 377, 1977 UJ 706 (SC).

88 *Aligarh Muslim University v Nadir Raza Naqvi* 1978 Lab IC 991, 1978 All LJ 950.

89 *Bans Narain Yadav v State of Uttar Pradesh* AIR 1977 All 6, 1977 Lab IC 92, 1977 All WC 21.

authority other than that which made the appointment, it is the confirming authority which would have the power to dismiss or suspend the appointee.⁹⁰

A seasonal clerk appointed by the assistant registrar, district cane officer can be informed by the secretary of the cane development office that his work was over, and such cases did not need termination orders from the appointing authority.⁹¹

The officer-in-charge, Agartala rationing authority, having been lawfully empowered by the notification dated 7 March 1986, his order suspending the appointment of the petitioner/respondent so far as the fair price shop was concerned, was held to be correct and regular.⁹²

If a legislative act or an executive decision on policy matter violates any Constitutional guarantee or has the potential of Constitutional repercussions as enforcement of an assured right, which is under the rule of political question, then the court should not abdicate its duties for upholding the provisions of the Constitution. However, in the case in hand, the removal or dismissal of respondent 4 by the President of India on the recommendation of the then Prime Minister of India, did neither offend nor infringe any fundamental or Constitution mandate. Even the said respondent 4 did not challenge his removal or dismissal. Undoubtedly, the prime minister has the prerogative whether to keep or remove any of his colleagues in the cabinet or council of ministers. As mentioned earlier, in the absence of the impugned removal or dismissal order passed by the President of India, it cannot be said whether such removal or dismissal was based on some extraneous considerations. Therefore, the judicial scrutiny or review is not at all warranted in this case.⁹³

By reason of s 249 of the Andhra Pradesh Panchayat Raj Act 1994, if a *sarpanch* is removed from his office, he stands disqualified to contest the election. Such a consequence is not provided for in a case where the General Clauses Act would be attracted. The procedure applicable in such a case must be followed for that purpose, but not the procedure which would not only remove him from his office, but also entail other penal consequences. Section 249 is a special provision in terms of which, when a *sarpanch* is removed from his post, he is also disqualified to contest the election. The same is not the case where a person in-charge is removed in terms of s 143(3) of the Andhra Pradesh Panchayat Raj Act coupled with the provisions of the General Clauses Act. In the instant case, therefore, it was held that for the purpose of removal of the appellant from the office of the person in charge, the procedure under s 249 of the Panchayat Act had no application

90 *T Cajee v U Jormanik Siems* AIR 1961 SC 276, 279-83, (1961) 1 LLJ 652, (1961) 2 SCA 1.

91 *Brijesh Kumar v District Cane Officer* (1994) 1 LPLBEC 235, 241.

92 *State of Tripura & Ors v Bhupati Chakraborty* AIR 2001 Gau 70, 73 (DB).

93 *Dalpat Raj Bhandari & Anor v President of India & Ors* AIR 1993 Raj 194.

and the procedure that could be invoked was only in terms of the General Clauses Act read with s 143(3) of the Panchayat Raj Act.⁹⁴

Where the power to appoint assistant accountants in the treasury had been transferred by the state government to the deputy commissioner, it has held that the deputy commissioner was not acting on behalf of state government while making the appointment and that he himself was the appointing authority.⁹⁵

A power to terminate may, in the absence of restrictions express or implied, be exercised subject to the conditions prescribed in that behalf by the authority competent to appoint.⁹⁶ In each case, therefore, the court has to see whether the relationship between the employer and the employee is dominantly contractual or statutory.⁹⁷ Since a power to appoint ordinarily implies a power to determine the employment, it would necessarily follow that if the post of assistant settlement commissioner was created by the Central Government and the expenditure in connection with it was to be met out of the funds provided by the Central Government, then it would be the Central Government alone which was competent to make appointments to the post and in fact, if the state government purported to accord sanction to the creation of one post of assistant settlement commissioner, that was merely for the purpose of regularising its own accounts procedure, because the amount of funds for meeting the expenditure in connection with the staff for this work was made available by the Central Government to the state government and it was the state government which was to disburse the expenditure out of that amount.⁹⁸ Similarly, an auditor of a government company, appointed by the Central Government, can be dismissed by the Central Government alone, so as to disqualify him from the membership of the Lok Sabha, under art 102 of the Constitution, on the ground of his being a partner of the firm functioning as auditor.⁹⁹

The expression 'termination' may no doubt, in ordinary parlance be given the widest meaning of termination including one for misconduct. But in the light of the various rules and the practice prevalent, the said word has come to be restricted to contractual termination unconnected with any idea of punishment for misconduct. The standing orders made by the Mysore State Road Transport Department have made a clear distinction between termination of the first character on the one hand

94 *Yerneni Venkata Ratnam v State Election Commr, Government of Andhra Pradesh, Hyderabad & Ors* AIR 2001 AP 354 (DB).

95 *Emperor v Maung Bo Maung* AIR 1935 Rang 263.

96 *SR Tiwari v District Board, Agra* [1964] 3 SCR 55, AIR 1964 SC 1680.

97 *Indian Institute of Technology v Mangat Singh Molar Singh* 75 Punj LR (D) 297, (1973) ILR 2 Del 6.

98 *Union of India v Gurbaksh Singh* AIR 1975 SC 641, 1975 Lab IC 390, (1975) SCC (Lab) 88, 1975 Cur LJ 197, (1975) 1 Serv LR 398, (1975) 3 SCC 638, (1975) 1 SCJ 351.

99 *G Basu v Sankari Prasad Ghoshal* (1963) 67 CWN 558, 566-69.

and removal or dismissal for misconduct on the other. The former is dealt with separately in Standing Order 11 and the latter is in the succeeding orders relating to punishment.¹

The General Clauses Act has been enforced so as to avoid superfluity of language in statutes wherever it is possible to do so. This section would apply when a different intention does not appear in the relevant Act to which it is sought to be applied,² because it has codified the well understood rule of general law, viz, the power to terminate flows naturally, and as a necessary consequence, from the power to create. In other words, it is a necessary adjunct of the power of appointment and is exercised as incidental to or a consequence of that power. The authority to call such officer into being necessarily implies the authority to terminate his functions when their exercise is no longer necessary, or to remove the incumbent for an abuse of those functions or for other causes shown.³ It makes no difference that the appointment was made with the advice of another body, since even in such a case, the appointing authority can dismiss a person appointed by him though with the advice of another authority.⁴ Of course, the distinction between the holder of an office of profit under the government and the holder of a service under the government must be always borne in mind.⁵ The government could appoint the president of the municipal committee and it has the power to dismiss him in Jammu & Kashmir.⁶

(b) Power to Suspend

Suspension means issuing an order that so long as the contract of employment subsists and until the employee is dismissed, he must not discharge his duties.⁷ The appointing authority has the power to suspend an employee.⁸

- 1 *Devraj Urs v General Manager, Mysore State Road Tpt Corpn* AIR 1971 Mys 99, (1970) 2 Mys LJ 496, 1971 Lab IC 461.
- 2 *State of Kerala v VPP Mohammed Kunhi* 1970 Serv LR 569-70 (DB).
- 3 *Rayarappan v Madhavi Amma* 1949 FCR 667, 669, AIR 1950 FC 140; *Joseph John v State of Travancore-Cochin* AIR 1953 Tr & Coch 130 (principles applicable to rules of business); *Kanta Devi v State of Rajasthan* AIR 1957 Raj 134; *Pradyot Kumar v Chief Justice, Calcutta* AIR 1957 SC 285; *Union of India v Parmindar Singh* AIR 1962 Raj 244.
- 4 *State of Assam v Kripa Nath Sarma* AIR 1967 SC 459, 462-63, (1967) 2 SCJ 877; reversing *Kripanath Sarma v State of Assam* AIR 1959 Assam 101 (wrt Assam Elementary Education Act 1962).
- 5 *G Basu v Sankari Prasad Ghosal* (1963) 67 CWN 558.
- 6 *Bishambar Nath v Government of Jammu & Kashmir* AIR 1958 J&K 6; *Dr Pratap Singh v State of Punjab* AIR 1963 Punj 298 (government has power to suspend a servant appointed by it).
- 7 *Gurudev Narayan Srivastava v State of Bihar* AIR 1955 Pat 131, 134 (DB).
- 8 *Union of India v Baijnath* 1972 Serv LR 382, 384 (DB) (Del); *Narisingha Murari v District Magistrate* AIR 1961 Cal 225, 65 CWN 129; *Dr Pratap Singh v State of Punjab* AIR 1963 Punj 298, (1962) ILR 2 Punj 642 (DB); reversed on another point in *Dr Pratap Singh v State of Punjab* AIR 1964 SC 72; following *Pradyot Kumar Bose v Chief Justice, Calcutta* AIR 1956 SC 285.

The appointing authority can suspend the appointee pending departmental proceedings or even after their completion.⁹ But exercise of power to suspend with retrospective effect is illegal.¹⁰

Section 16 has no authority for withholding emoluments of a suspended employee.¹¹ Nor does s 16 vest in the appointing authority the power to withdraw any part of emoluments of the employee during his suspension.¹²

Under s 10(2) of Shri Kameshwar Singh Darbhanga Vishwavidyalaya Act 1952, the Chancellor empowered to appoint a Vice-Chancellor for a certain term has also the power, under justifiable circumstances, to suspend or dismiss him.¹³

When a suspension is not punitive, it can be brought about by an authority subordinate to the appointing authority.¹⁴

The power to suspend, vested in the power to appoint, has not been taken away by any provision of the Punjab Tehsildari Rules.¹⁵

2. APPLICATION OF SECTION TO THE APPOINTED AND NOT TO THE ELECTED

Section 16 applies only when there is no different intention in the relevant statute. A different intention manifest in ss 77 and 90 of the United Provinces Uttar Pradesh District Boards Act 1922¹⁶ would exclude the application of this section.

When an office is controlled by the provisions of an Act and when that office is not an office at will, for example, an elective office created by an Act with no provision for removal by vote of no confidence, s 16 will have no application to such an office.¹⁷ But, when the provision for renewal by no confidence exists, the provisions of s 16 will give the power of removal to the appointing authority.¹⁸

9 *Suroj Kumar Datta v State of West Bengal* AIR 1959 Cal 294; *Gurudev Narain Srivastava v State of Bihar* AIR 1955 Pat 131, 134 (DB) (power to suspend contract of service and power to suspend officer from performing duties, distinguished).

10 *Hemanta Kumar v SN Mukharjee* AIR 1954 Cal 340, 343, 58 CWN 1 (DB).

11 *Uma Shankar v BR Anand* 1968 Lab IC 1483.

12 *Tustu Charan Saha v Collector, District Hoogly*: (1968) ILR 2 Cal 217; *Uma Shankar Shukla v BR Anand* 1968 Lab IC 1483, 1968 MPLJ 604 (DB).

13 *Acharya Prabhakar Misra v Chancellor* AIR 1972 Pat 393, 395-96.

14 *Saila Behari Chatterjee v State of Orissa* AIR 1966 Ori 150.

15 *Bhupinder Singh v State of Haryana* AIR 1968 P&H 406, 412.

16 *Hira Devi v District Board* AIR 1952 SC 362.

17 *Hindurao Balwant Patil v Krishna Rao Parashuram Patil* AIR 1982 Bom 216, (1982) 1 Bom CR 65, (1982) 1 Co-op LJ 149; relying on *Kanta Devi v State of Rajasthan* AIR 1957 Raj 134.

18 *Narayan Nair v Joint Registrar, Co-op Societies* AIR 1983 Ker 136, 1982 KLT 602, (1982) 18 Co-op LJ 172.

The section does not apply to the *pradhan* of a *gram sabha* so as to suspend him pending an inquiry against him.¹⁹ The provisions of s 16 of General Clauses Act are not absolute in terms but depend upon the provisions in the Act or regulation which empowers the authority to make the appointment.²⁰

Section 16 talks of inherent powers of removal of a person appointed. This section is not applicable to the person elected to an office.²¹ However, appointment and dismissal of a person from the post of Deputy Prime Minister by the President on the advice of the Prime Minister is purely a political issue and is a matter of the Prime Minister's prerogative.²²

However, if the government nominates an official or non-official on the board of directors, it has the inherent power to revoke the same under s 16 of the General Clauses Act.²³

Section 16 does not apply to the construction of the business rules framed under art 166(3) of the Constitution, but the principle is applicable even apart from any statutory provision.²⁴ Though it has not been specifically mentioned in r 16 or r 28(2) of the *lekhpals* service Rules that the assistant collector shall be empowered to dismiss or remove a *Lekhpal* and though the provisions of s 16 of the General Clauses Act will not apply to the interpretation of the rules made under art 309 of the Constitution, the principle underlying s 16 can be applied to the interpretation of the *Lekhpals* Service Rules 1958, and it was held that the assistant collector who was specifically authorised to appoint a *Lekhpal* must by implication have also been authorised to dismiss or remove the *Lekhpal* from service.²⁵ The provisions of this section are not intended to abrogate the right of natural justice when action is taken affecting the civil rights of a citizen.²⁶

Under s 14(3) of the Assam Elementary Education Act 1962, the power of appointment of an elementary school teacher is vested in the assistant secretary, though the power has to be exercised on the advice of a committee constituted under s 16 of the Act. The appointing authority is therefore, the assistant secretary, and advice of the committee is mere recommendation.²⁷

Section 16 has no application to the cancellation of selections made by a selection committee.²⁸ Similarly, a seasonal clerk appointed by the asst registrar or district cane officer can be informed by the secretary of the cane

19 *Babu Nandan Gir v SDO* AIR 1966 All 158.

20 *Ramesh Bhauraoji v State* AIR 1984 Bom 200, 205.

21 *Jagdev Singh v Registrar, Co-op Societies* AIR 1991 P&H 149, 158 (FB).

22 *Dalpat Raj Bhandari & Anor v President of India & Ors* AIR 1993 Raj 194-95.

23 *Ghanshyam Singh v Union of India* AIR 1991 Del 59, 69.

24 *Joseph John v State of Travancore-Cochin* 13 KLT 1, AIR 1953 Tr & Coch 130 (FB).

25 *Sita Ram v State* 1967 All WR 241 (HC), 1967 All Cr R 180, 1967 All LJ 716, 1968 Lab IC 555, 1968 Cr LJ 721, AIR 1968 All 207.

26 *Ram Dayal v Registrar of Registrations, Patiala* 1969 Punj LR 335.

27 *State of Assam v Kripa Nath Sarma* AIR 1967 SC 459, (1967) 2 SCJ 877.

28 *KR Shivadatta v Selection Committee* (1972) 1 Mys LJ 5.

development officer that his work is over and such cases do not need termination orders from appointing authority.²⁹

Section 16 of the Act applies, unless a different intention appears in the enactment to which it is sought to be applied, and has no application to the case of revocation or cancellation of the authority of the appointed arbitrator. In the matter of application of the principle of this section to an order cancelling a licence granted to a document writer, it was held that such an order could not be sustained by reason of breach of the principles of natural justice.³⁰ An arbitrator is not really in the position of an employee or servant of the government, but occupies the position of a tribunal or a court.³¹ According to the Calcutta High Court, the section has been held to apply to the application for removal of a receiver,³² but the Madras High Court,³³ holds that the power under s 16 would not enable a court, appointing a receiver, to remove him. However, refusal to remove a receiver is not appointment.³⁴

The commissioner having power to appoint an administrative committee under the Bengal Wakf Act 1934, has also the power to dissolve it.³⁵

Having regard to the provisions of this section, it follows that the power of suspending a government servant is vested in the authority which appointed him.³⁶ But, no resort can be taken to this section when express powers have been given to some authority to impose dismissals or suspensions.³⁷ The authority entitled to appoint a public servant carries with it the power to suspend, pending a criminal proceeding which may eventually result in a departmental inquiry against him. This is the general principle embodied in this section.³⁸ Applying this rule, it was held in *Lakkhraj Sathramdas v NR Shah*,³⁹ that the deputy custodian of evacuee property has the power to terminate the appointment of the manager in charge of evacuee property. The principle is that the court must ascribe the act of a public servant to an actual existing authority under which it would

29 *Brijesh Kumar v District Cane Officer* (1994) 1 UPLBEC 235, 241.

30 *Ram Dayal v Registrar, Registrations, Patiala* (1969) 71 Punj LR 335.

31 *East India Film Studios v PK Mukherjee* AIR 1954 Cal 41; overruled on another point in *State of West Bengal v Nandlal Dey* AIR 1975 Cal 130; *Sitararam v State* AIR 1968 All 207; *Syed Shaukat Imam v State of Bihar* AIR 1969 Pat 347-49, 1969 Bih LJR 221 (s 16(4) of the Bihar Wakfs Act 1948, so far as matter of change of members of a Majlis is concerned).

32 *Nibaran Chandra Mitter v Profulla Kumar Mitter* (1955) ILR 2 Cal 203, 209, AIR 1955 NUC (Cal) 2915 (DB).

33 *Rukmani Ammal v Adv-General of Madras* AIR 1916 Mad 924-25.

34 *Skari Kurovilla v Mathai Avira* 1954 KLT 981 AIR 1955 NUC (Tr) 1907.

35 *Nazla Rab v Commr of Wakf* AIR 1972 Cal 389.

36 *S Partap Singh v State of Punjab* AIR 1964 SC 72.

37 *Hira Devi v District Board, Shahjahanpur* AIR 1952 SC 362, 365, (1952) SCJ 533; reversing *District Board, Shahjahanpur v KN Kapoor* AIR 1948 All 199.

38 *KP Kapur v Union of India* AIR 1964 SC 787.

39 AIR 1966 SC 334.

have validity rather than to one under which it would be void. The action of a public authority, considered to be taken in an emergency, would include the making of an order of interim suspension.⁴⁰

After a licence granted under r 5(a) of the Punjab Document Writers Licensing Rules was renewed twice, the licensee was asked to explain an allegation of his having obtained the licence on misrepresentation. The licensee submitted an explanation, but without further inquiry the licence was cancelled. Section 16 of the General Clauses Act or s 19 of the Punjab General Clauses Act was held not to apply and the cancellation was held to be sustainable.⁴¹

The power in s 16G(7) of the United Provinces Intermediate Education Act 1921, vested in the inspector of schools to approve an order of suspension, will also include the power to disapprove.⁴²

3. THIS SECTION AND ARTICLE 16 OF THE CONSTITUTION

The expression 'matters relating to employment', used in art 16(1) of the Constitution, is not confined to initial matters prior to the act of employment, but comprehends all matters in relation to such employment, both prior and subsequent, and incidental there to, forming part of the terms and conditions of such employment, such as provisions as to salary, increment, leave, gratuity, pension, age of superannuation, promotion, and even termination of employment.⁴³ A service rule inconsistent with art 311 of the Constitution will be illegal.⁴⁴

4. THIS SECTION AND ARTICLE 188 OF THE CONSTITUTION

On a construction of the constitutional provision in art 188 and ss 14, 15 and 16 of the General Clauses Act, it would follow that the jurisdiction of the Governor under art 188 is concurrent with the person

40 *Vice-Chancellor, J&K University v DK Rampal* AIR 1977 SC 1146, 1155, 1977 Lab IC 710, (1977) 2 LLJ 1; reversing *DK Rampal v Vice-Chancellor, J&K University* 1974 Kash LJ 171 (DB).

41 *Ram Dayal v Registrar of Registrations, Patiala* 71 Punj.LR 335.

42 *Managing Committee, Dayanand Inter College, Gorakhpur v District Inspector of Schools, Gorakhpur* 1981 Lab IC 993 (All).

43 *General Manager, Government Branch Press v DB Balliappa* AIR 1979 SC 429, 433, 1979 Lab IC 146, (1979) 1 Serv LR 351, (1979) 1 LLJ 156, (1979) 1 SCC 477, 1979 SCC (Lab) 39, (1979) 1 Lab LN 324, 1979 Rajdhani LR 209, 1979 BBCJ (SC) 11, 1979 Serv LJ 233, 38 Fac LR 209, 1978 Serv LC 290, (1978) 2 SCWR 359, 1978 SLWR 454, [1979] 2 SCR 458; *General Manager, Southern Railway v Rangachari* AIR 1962 SC 36.

44 *Anup Singh v State* AIR 1953 Pepsu 24.

who may be appointed by him for the purpose of administering the oath to an elected legislator. An authority which delegates its powers does not divest itself of the powers, and can resume them in full or in part.⁴⁵ In such cases, the option lies with the person required to take the oath to choose the person before whom he would like to take the oath.⁴⁶

5. THIS SECTION AND ARTICLES 233 AND 235 OF THE CONSTITUTION

On reading s 16 of the General Clauses Act with art 367(1) of the Constitution, a different intention appears so far as the interpretation of arts 233 and 235 of the Constitution are concerned. The control, vested in the High Court under art 235 of the Constitution, being absolute over the district judges, subject only to certain conditions, the power to suspend them also vests in the High Court and is excluded from the powers of the governor. Such power would have normally been with him under art 233 of the Constitution.⁴⁷ The power to appoint a district judge on probation vests, under art 233 of the Constitution, in the Governor, though the power to confirm such appointment vests in the High Court.⁴⁸ The power to remove and dismiss a district judge has also to be exercised by the governor in consultation with the High Court.⁴⁹

Section 17. Substitution of functionaries—(1) in any [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

(2) This section applies also to all Central Acts made after the third day of January 1868, and to all Regulations made on or after the fourteenth January 1887.

45 *G Vasantha Pai v CK Ramaswamy* AIR 1978 Mad 342, 349, 350-51.

46 *Abid Mahommed Khan v State* AIR 1958 MP 44, 1957 MPLJ 866.

47 *Registrar, Orissa High Court v Baradakanta Misra* AIR 1973 Ori 244, (1973) 1 Cut WR 237, (1973) ILR Cut 134.

48 *High Court of Punjab and Haryana v State of Haryana* AIR 1975 SC 613, 621-22, 1975 Lab IC 375, 1975 Serv LJ 189; reversing *Narendra Singh Rao v State of Haryana* (1974) ILR Punj 121 (FB).

49 *Mahommed Ilyas Alvi v State of Maharashtra* AIR 1965 Bom 156, 67 Bom LR 170 (DB).

SYNOPSIS

1. Scope and Analogy	465
2. Reconstitution of Functionary	465

1. SCOPE AND ANALOGY

This section refers to the substitution of functionaries. The following section deals with the devolution of functionaries.

Section 17 is analogous to s 32(2) of the English Interpretation Act of 1889, which reads as follows:

Where an Act, passed after the commencement of this Act, confers a power or imposes a duty on the holder of an office, as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

2. RECONSTITUTION OF FUNCTIONARY

If a functionary is constituted of a body of persons, this section would apply if that body of persons is reconstituted.

In *Bhupati Goswami v CR Krishnamurti*,⁵⁰ the petitioner was kept in detention under a detention order made under the provisions of the Preventive Detention Act 1950. One of the grounds urged by the petitioner questioning the validity of the order of detention was that the advisory board, which finally considered the matter, was not the board to which the case of the petitioner had been referred by the state government.

It appeared from the facts on record that the state government constituted an advisory board under the Preventive Detention Act by notification, dated 30 May 1961. While the said board was functioning, a second board was constituted by the state government by notification, dated 15 February 1968. The petitioner, thus, submitted that when the order of detention was served on the petitioner on 3 March 1968, the only board that was in existence was the board constituted under the government notification dated 15 February 1968. On 2 April 1968 when the case was placed by the state government before the board, this board was functioning. The petitioner's case was considered by a different board which was reconstituted under the government notification dated 1 May 1968, and as such it cannot, according to the petitioner, be said that the government has referred the matter to this board within thirty days from the date of detention as required under s 9 of the Preventive Detention Act.

⁵⁰ AIR 1969 A&N 14.

Taking into consideration, all the facts, the court held:

The board that has heard the petitioner's case on 8 May 1968 is the reconstituted board and is a successor to the board that was constituted in the government notification dated 15 February 1968. Under the General Clauses Act 1897, section 18 provides that in any general Act or regulation made after the commencement of the Act, it shall be sufficient, for the purposes of indicating the relation of a law to the successor of any functionary or of corporation having perpetual succession, to express its relation to the functionaries or corporations. Section 17 of the said Act also refers to substitution of functionaries. Besides under section 21 of the same Act, where, by any central Act or regulation, a power to issue any notification, order, scheme, rule, form, or bye-law is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions, if any, to add, to amend, vary or rescind any notifications, orders, rules or bye-laws so issued. From all these provisions, it is clear that there can be no valid objection to the present board considering the case of the petitioner which was pending before the earlier board.

It is open to the successor authority to continue the work started by the predecessor authority.⁵¹

By virtue of cl (1) of s 17 an acting district magistrate would be competent to perform the functions of a district magistrate.⁵² The right to eject a tenant, acquired, by the erstwhile board of trustees under the Bombay Port Trust Act 1879, by giving notice to quit, enured for the benefit of the successor Board of trustees constituted under the Major Port Trust Act 1963, and the suit filed by the successor board for ejectment of tenant was held competent.⁵³

Section 18. Successors—(1) in any [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

(2) This section applies also to all [Central Acts], made after the third day of January 1868 and to all Regulations made on or after the 14 January 1887.

51 *K Gopala Krishnayya v State of Andhra Pradesh* AIR 1959 AP 292.

52 *Kandasami Pillai v Emperor* LR 2 Mad 6975; *K Gopala Krishnayya v State of Andhra Pradesh* AIR 1959 AP 292, (1958) 2 Andh WR 211; *Saroj Kumar v State* AIR 1959 Cal 294.

53 *Vasant Kumar Radha Kishan Vora v Board of Trustees* AIR 1991 SC 14, 18.

SYNOPSIS

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1. EXERCISE OF FUNCTIONS BY SUCCESSORS-IN-OFFICE

The State of Madras, in consultation with and with the concurrence of the High Court, issued a notification appointing district magistrates generally by virtue of their office as assistant sessions judges. It was held that such appointment was perfectly valid and did not violate the provisions of art 233 of the Constitution and that even with regard to successors it was valid as the notification was issued after consultation with the High Court as under s 8, General Clauses Act, it is sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.⁵⁴ It is not essential that the same statutory authority that initiates the scheme should implement or continue it. It is open to the successor authority to implement or continue the work started by another statutory body.⁵⁵

In a case under the Preventive Detention Act, when there is a change in the advisory board after service of the detention order, the new advisory board can consider the case pending before the earlier board according to ss 17, 18 and 21 of the General Clauses Act.⁵⁶

Where a municipality was superseded and an administrator was appointed, it was held that the municipal council continues to be in existence and all its powers and duties are exercised by the administrator. It was further held that s 18 was applicable to the case and the administrator was the local authority of the municipality within the meaning of s 2(8) of the Prevention of Food Adulteration Act 1954.⁵⁷

The powers and duties of the Corporation of City of Nagpur are exercised by the administrator under s 409 of the City of Nagpur Corporation Act 1948 when it is superseded. The administrator is thus a local authority within the meaning of s 20 read with s 2(8). Even assuming that the administrator succeeded the municipal corporation on its supersession, he must be held to be the local authority by virtue of s 18 of the General Clauses Act.⁵⁸

54 *Re Palanisamy Chettiar* AIR 1957 Mad 351.

55 *K Gopala Krishnayya v State of Andhra Pradesh* AIR 1959 AP 292.

56 *Bhupati Goswami v CR Krishnamurti* 1969 Cr LJ 291, AIR 1969 Assam 14.

57 *Gulab Chand v State* (1963) ILR 13 Raj 820, (1963) 2 Cr LJ 589; *Rahaman v Nagpur Corpn* 73 Bom LR 344.

58 *Rehaman v Corpn of City of Nagpur* 1970 Mah LJ 618, 1970 Cr LJ 1436, AIR 1970 Bom 394; *Rampada Majhi v Nagendra Nath Chakravarty* 1968 Cr LJ 557; overruling *Administrator, Howrah Municipality v M/s Byron & Co* 1958 (2) Cr LJ 169 (Cal).

A permission granted by an officer to whom powers have been delegated by the district magistrate under s 3 of the United Province (Temporary) Control of Rent and Eviction Act 1947 continues to be valid even during time of the successor District Magistrate, unless such successor changes the delegation.⁵⁹

Where, in one of the mining leases executed by the ruler of a former state and continued by state government after merger, the former political agent was described as an arbitrator and a dispute arose as to the mode of computation of royalties, it was held that the petitioner could either apply to the Central Government in revision under s 30 of the Mines and Minerals (Regulation and Development) Act 1957, or take recourse to the arbitration clause provided in the lease agreement. It was further held that the civil court might ultimately have to decide who is the present official who exercises the functions of the former political agent for the purpose of the arbitration clause.⁶⁰

The Excise Licensing Board, under s 7(2) of the Bengal Excise Act 1909, exercising the functions of the collector, has to be substituted for the word 'collector' in the context of appeals.⁶¹

An administrator appointed on supersession of a municipality is competent to grant sanction for prosecution under the Prevention of Food Adulteration Act.⁶²

2. CHANGE IN DESIGNATION OF SUCCESSOR

On 15 November 1952, the President of India, in exercise of the powers conferred upon him, by art 370 of the Constitution, dealing with respect to the State of Jammu & Kashmir made an Order CO 44, substituting the then existing explanation in cl (1) of art 370 of the Constitution by the following explanation, namely:

Explanation—For the purposes of this article, the government of the state means the person for the time being recognised by the President on the recommendation of the legislative assembly of the state as the *Sadar-i-Riyasat* of Jammu & Kashmir, acting on the advice of the council of ministers of the state for the time being in office.

In supersession of an earlier Constitution (Application to Jammu & Kashmir) Order 1950, the President of India promulgated, on 14 May 1954, the fresh Constitution (Application to Jammu & Kashmir) Order 1954, and while

59 *Madan Lal v Kali Prasad* AIR 1950 All 108-09, 1950 All LJ 150.

60 *M/sTata Iron and Steel Co Ltd v State of Orissa* (1962) ILR Cut 348.

61 *Hem Chandra Mandal v Excise Licensing Board of Asansol* AIR 1955 NUC (Cal) 4290.

62 *Rampada Majhi v Nagendra Nath Chakravarty* 1963 Cr LJ 557.

applying the provisions of art 367 to the State of Jammu & Kashmir, the said Constitution order added to art 367 and additional cl (4), and sub-cl (b) of that clause provided that references to the government of the said state shall be construed as including references to the *sadar-i-riyasat* acting on the advice of his council of ministers.

The effect was to change the designation of 'maharaja' to that of *sadar-i-riyasat* of the State of Jammu & Kashmir. On 24 November 1965, the President, in exercise of the powers conferred by cl (1) of art 370 of the Constitution, with the concurrence of the government of the State of Jammu & Kashmir, made the Constitution (Application to Jammu & Kashmir) Second Amendment Order 1965 whereunder, sub-cl (b) of cl (4) of art 367 was substituted by cll (aa) and (b) providing that references respectively to the person recognised as *sadar-i-riyasat* of Jammu & Kashmir and the government of that state, shall be construed as references to the governor of Jammu & Kashmir. The designation of *sadar-i-riyasat*, too, was ultimately changed to that of governor.

It is in this background that a contention, in the case of *Mhd Maqbool Damnoo v State of Jammu & Kashmir*,⁶³ was raised that the Jammu & Kashmir Preventive Detention (Amendment) Act 8 of 1967 was invalid as it was not assented to by the *sadar-i-riyasat*. The contention was based on the argument that s 147 of the Constitution of Jammu & Kashmir contemplates the perpetual existence of the *sadar-i-riyasat* and that this section not only bars the legislative assembly of the state from amending any provision of that section but also contains another provision that the assent to an amendment of that Constitution must be given by the *sadar-i-riyasat*.

The Constitution of Jammu & Kashmir, however, itself contains s 158 which provides that unless the context otherwise requires, the General Clauses Act shall apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the state legislature.

The Supreme Court, therefore, repelled the above contention by resorting to s 18 of the General Clauses Act and held:

By virtue of this Act, if the governor is the successor to the *sadar-i-riyasat*, he would be entitled to exercise all the powers of the *sadar-i-riyasat*. There is no doubt that he is the successor...

The court further held:

It is true that the governor is not elected as was the *sadar-i-riyasat* but the mode of appointment would not make him any the less a successor to the *sadar-i-riyasat*. Both are heads of the state.

63 AIR 1972 SC 963, (1972) 1 SCA 363, 1972 Cr LJ 597, 1972 J&K LR 319, (1972) 2 SCJ 735, 1973 Mad LJ 1 (Cr).

By virtue of s 18, the governor in the State of Jammu & Kashmir, as the successor of the *sadar-i-riyasat*, continues to be the head of government and the change in designation makes no difference.⁶⁴

Section 19. Official chiefs and subordinates—(1) In any [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

(2) This section applies also to all [Central Act] made after the third day of January 1868, and to all regulations made on or after the fourteenth day of January 1887.

Where a superior officer has been authorised to perform some duties under an Act or a regulation, a subordinate or deputy officer lawfully performing those duties in the place of his superior is equally empowered to perform the duties of the office of the superior.⁶⁵

SYNOPSIS

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1. MEANING OF SECTION

This section simply states that it need not be made express, but it rather follows by implication, that the law which relates to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior. It follows that there has to be a law for vesting legal authority by making a provision that a subordinate can enter upon the functions of his superior in the latter's incapacity or absence, or any such other eventuality. This is the logical conclusion which inevitably follows by the use of the expression 'subordinate lawfully performing the duties of that office in the place of their superior'. The emphasis on the word 'lawfully' pre-supposes the existence of a law entitling the subordinate to fill in the vacancy of his superior.

64 *Md Maqbool Dainco v State of Jammu & Kashmir* AIR 1972 SC 963, 988-69, 1972 Cr LJ 597, (1972) 2 SCJ 735, 1973 Mad LJ 1 (Cr).

65 *Ram Kishan v Union of India* AIR 1996 SC 255.

Under r 4 of the Delhi Police (Appointment and Recruitment) Rules 1980 an additional deputy commissioner of the police is also one of the appointing authorities. By the force of s 19 of the General Clauses Act, he can exercise the powers of the deputy commissioner of police. Thus, in a given case, even an additional deputy commissioner can pass an order of dismissal, if s 19 of the General Clauses Act is borne in mind.⁶⁶

2. WHEN NO DELEGATION PROVIDED

The subordinate entering into the real functions of his superior by authority of law is one thing, but the subordinate using the powers vested in the superior without a legal sanction of delegated authority by the superior is quite another. The section protects the former but not the latter incident.

Section 7 of the Extradition Act conferred the power of issuing a warrant for extradition proceedings on the political agent, but when a warrant for extradition was issued not by the political agent but by another officer subordinate to the political agent, and there was no provision in the Act for delegation of powers by the political agent to any other functionary working under him, it was held by the High Court of Allahabad that the warrant thus issued by an officer other than the political agent was illegal.⁶⁷

66 *Ram Kishan v Union of India & Ors* AIR 1996 SC 255-56, (1999) 6 SCC 157.

67 *Ram Pargas v Emperor* AIR 1948 All 129.

