

CIVIL WRIT

Before Bhandari, C. J. and Dulat, J.

SHRI RAM PIARA,—Petitioner

versus

MUNICIPAL COMMITTEE, HOSHIARPUR,—Respondent

Civil Writ No. 57 of 1953

1954

October, 4th

Punjab Municipal Act (III of 1911) Sections 39, 41, 65—Extent of powers under—Whether Government can remove a Municipal servant without affording him an opportunity of being heard—Interpretation of statutes—Inconsistency between the Statute and the Rules—Interpretation. rule of.

In pursuance of a directive issued by the Provincial Government, a Municipal Committee terminated the services of a Municipal employee without framing charges and without affording him an opportunity of being heard.

Held, that the order of removal was not bad in the eye of law.

Held further, that—

- (1) In the absence of a statutory or contractual provision to the contrary, a right vests in a master to terminate the services of his servant at any time and for any cause without assigning reasons for the same.

- (2) Officers of local authorities, like public officers, hold office during the pleasure of the appointing authority and, subject to the statutory provisions by which they are regulated, can be removed at any time without notice or hearing.
- (3) A committee proceeding to remove an employee for misconduct under section 39 must follow the procedure prescribed by the statutory rules, for the powers of removal under that section have been subjected to the provisions of the said rules.
- (4) The Provincial Government is under no obligation to frame charges against a Municipal employee or to afford him an opportunity of being heard before ordering his removal under section 41. The power of removal has been reposed by the Legislature in the discretion of the Provincial Government and the said Government has been made the sole judge for deciding whether a person is or is not fit for his employment. No formal charges or hearing are as a rule required where the removal depends on the exercise of personal judgment on the question whether the cause of removal exists.
- (5) As the Committee put an end to the services of the petitioner under the orders of the Provincial Government and as the Provincial Government had passed its order in the exercise of its personal judgment, it was not necessary for the Committee to frame charges against him or afford him an opportunity of defending himself.

Held further, that if there is inconsistency between the Statute and a Statutory rule, the Statute will take precedence over the Statutory rule. The Court must give effect to the purpose of the Statute and the intention of the Legislature.

Petition under Article 226 of the Constitution of India, praying as under:—

- (a) that the Hon'ble Court may be pleased to hold that the directive issued by the Government of the Punjab as per Memorandum No. 1349-C-53/12388, dated 25th February, 1953, and the resolution passed by the Municipal Committee, Hoshiarpur, in pursuance of the above-mentioned directive are illegal, ultra vires and malafide.

- (b) *that the Hon'ble Court may be pleased to issue writ in the nature of mandamus, prohibition or pass such other order or directive as it may deem fit commanding respondent to cancel its resolution passed at the special meeting of the Hoshiarpur Municipal Committee held on 14th March, 1953, terminating the services of the petitioner.*
- (c) *that pending the final disposal of this petition, this Hon'ble Court may be pleased to pass an ad interim order directing the respondent not to give effect to the aforesaid resolution.*
- (d) *that this Hon'ble Court may be pleased to pass such other order as it may deem expedient.*

TEK CHAND, for Petitioner.

K. L. GOSAIN, for Respondent.

ORDER

Bhandari, C. J. BHANDARI, C. J. This petition raises the question whether the power of removal conferred on the Provincial Government by section 41 of the Punjab Municipal Act can be exercised in respect of an officer or servant of a Municipal Committee without affording such officer or servant an opportunity of being heard. Section 41 is in the following terms :—

“41. If in the opinion of the Provincial Government any officer or servant *

* * * * * is unfit for his employment the Committee shall dismiss him.”

Shri Ram Piara petitioner entered the service of the Municipal Committee of Hoshiarpur in the year 1928 and rose gradually to the post of a Head Clerk.

On the 26th February, 1953, the Punjab Government addressed a communication to the

Commissioner, Jullundur Division, which was in the following terms :—

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“Subject Participation of Dr. Shiv Charan Das Sud Municipal Medical Officer of Health and D. Ram Piara in R. S. S. and anti-Government activities.

1. * * * * *

2. Government have decided that the Municipal Committee, Hoshiarpur, should be directed that unless there is any agreement of employment to the contrary, the services of Dr. Shiv Charan Dass Sud part-time Medical Officer of Health and Shri Ram Piara Head Clerk should be dispensed with under section 45 of the Punjab Municipal Act, 1911, after giving one month's notice or one month's pay in lieu thereof, without assigning any cause. The action taken by the Committee may be intimated to Government at a very early date.

3. * * * * *

In compliance with the direction issued by the Provincial Government the Municipal Committee terminated the services of the petitioner by means of a resolution which runs as follows:—

“The directions of the Government be complied with. In compliance with the orders of the Government the services of Dr. Shiv Charan Dass Sud part-time Municipal Medical Officer of Health and Shri Ram Piara Head Clerk be dispensed with under section 45 of the Punjab Municipal Act, 1911, after giving one month's pay in lieu of one month's notice.”

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On the 17th March, 1953. the petitioner presented the present application under Article 226 of the Constitution of India in which he stated that his dismissal was contrary to law as no reason was assigned for his dismissal, no charges were framed or furnished and no opportunity was given him to be heard as provided by the rules by which his conditions of service were regulated. He accordingly prayed for reinstatement and for a declaration that the directive issued by the Provincial Government on the 26th February, 1953, and the resolution passed by the Municipal Committee in pursuance of the said directive were void and of no effect.

Before I proceed to deal with the specific question which has been agitated before us it would, I think, be desirable to set out the provisions of law which have a bearing on the point which has been placed before us for determination. Section 39 of the Punjab Municipal Act, provides that subject to the provisions of the Act, and the rules and bye-laws made thereunder, a Municipal Committee is at liberty to suspend, remove, dismiss or otherwise punish any officer or servant appointed by it. Section 41 enacts that if in the opinion of the State Government any officer or servant of the Committee is unfit for his employment the Committee shall dismiss him. Section 65 declares that in the absence of a written contract to the contrary every officer or servant shall be entitled to one month's notice before discharge or to one month's wages in lieu thereof; unless he is discharged during a period of probation or for misconduct or was engaged for a specified term and discharged at the end of it. The rules framed under section 240 of the statute declare that no officer or servant of a Committee shall be dismissed unless a definite charge

has been framed in respect of each offence and the officer or servant sought to be dismissed has been afforded a reasonable opportunity of defending himself. The expression 'dismissal' appearing in the rules has been defined to mean permanent removal from a substantive appointment for misconduct or incompetence and to include discharge for misconduct in subsection (1) of section 46 of the Act. These rules control and restrict a Committee in the exercise of the powers of removal for the provisions of section 39 have been subjected to the provisions of the Act and the rules and bye-laws made thereunder. No such restriction has been imposed on the powers of the Provincial Government to order the dismissal of a Municipal Officer or servant under the provisions of section 41.

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The relationship of master and servant comes into existence when a person known as the master and a person known as the servant come to an agreement, the one to employ and the other to serve. The agreement whether express or implied usually contains stipulations both in regard to the period of employment and the remuneration to be paid therefor. If the contract is for a fixed period it is not open to the master to discharge the servant before the end of the stipulated period unless he is able to satisfy the Court that the servant has violated the provisions of the contract or has failed to discharge the duties which were required of him or is guilty of misconduct or that there is some other good reason for his dismissal. If, however, the contract is not for a particular period and if there is no contractual or statutory restriction on the power of the master to terminate the services of the employee, the master enjoys an absolute power to put an end

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to the personal relations created by the employment at any time and for any cause without rendering himself liable to the payment of damages. It may thus be stated as a general proposition that in the absence of a contractual or statutory provision to the contrary a right vests in the master to terminate the service of his servant at any time without giving him any reasons for the same.

The right of the sovereign power to terminate the services of an employee are much wider than the right of a private employer. Certain high constitutional officers for example hold office during good behaviour and can only be removed by impeachment by both the Houses of Parliament. Other public officers who are appointed by the State hold office at the pleasure of the State [*R. Venkata Rao v. Secretary of State* (1)]. Officers of Local Authorities, like public officers, hold office during the pleasure of the appointing authority, [*Prabhu Lal Upadhyya v. District Board, Agra and another*, (2), *Malik Narain Das v. District Board, Jhang*, (3), and *McManus v. Bowes* (4)]. They can be removed at any time without notice or hearing [*Wright v. Marquis of Zetland and others*, (5), *Tiruvambala Desikar Gnana Sambanda Pandara-Sannadhi Avargal and another v. Chinna Pandaram alias Manikkavachaka Desikar and others*, (6), and *B. Roshan Lal Goswala v. District Board, Aligarh and another* (7)].

Mr. Tek Chand, who appears for the petitioner, contends that although ostensibly his client was removed from the service of the

(1) A.I.R. 1937 P.C. 31

(2) A.I.R. 1938 All. 276

(3) A.I.R. 1940 Lah. 71

(4) (1938) I.L.B. 98. 99

(5) (1908) I.K.B. 63

(6) I.L.R. 40 Mad. 177

(7) A.I.R. 1935 All. 802

Committee on the ground that the Provincial Government considered him unfit for his employment, the real cause of his removal was that he was alleged to have participated in R.S.S. and other anti-Government activities, as was clear from the heading of the Communication which was received by the Municipal Committee of Hoshiarpur. If the petitioner was removed on the ground that he had participated in these activities then, it is argued, the dismissal or discharge must be deemed to be for misconduct and the order of removal must be set aside on the short ground that no charges were framed against the petitioner and he was not allowed to clear himself of the allegations which were made against him. Our attention has been invited to *Dr. Mukand Lal v. The Municipal Committee, Simla* (1). In this case the services of a Medical Officer were terminated by the Simla Municipality on the payment of one month's wages in lieu of notice. Although action was taken against the applicant for misconduct no charge was framed against him and he was not given an opportunity to show cause against the action proposed to be taken and the grounds of the decision were not stated in the resolution passed. The applicant applied for a writ of *mandamus* directing the Municipality to forbear from acting on the resolution. A Division Bench of this Court issued the writ prayed for on the ground that the applicant could not be discharged from service for the alleged misconduct except in accordance with the procedure prescribed by the rules. Kapur, J., held that even in the absence of any rules the principle of natural justice, i.e., the maxim *audi alteram partem*, no man shall be condemned unheard, would apply in cases of this kind.

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The argument which has been addressed to us on behalf of the petitioner cannot bear a moment's scrutiny for it ignores the fundamental distinction between the provisions of section 39 and of section 41. A Committee proceeding to discharge an officer or servant for misconduct under section 39 must follow the procedure prescribed by the statutory rules, for the powers of removal under this section have been subjected to the provisions of the said rules. No statutory obligation has, however, been imposed on the Provincial Government when it proceeds to demand the dismissal of a municipal officer under section 41. Had the Committee in the present case proceeded to terminate the services of the petitioner voluntarily and of its own accord, and not at the instance of another authority, there can be no manner of doubt that it would have been under a statutory obligation to frame charges against him and to afford him an opportunity of being heard. But the Committee was not acting voluntarily or of its own free will but was acting merely as the agent of another authority. It was carrying out the orders which had been issued by the Provincial Government and which it was bound to obey. It was acting in a purely ministerial capacity and its own opinion in regard to the guilt or innocence of the petitioner was of little or no consequence. The Committee had no material on the basis of which any charges could be framed and no evidence on the basis of which the charges could be sustained. It is true that it was vaguely alleged in the communication which was received from Government that the petitioner had participated in certain undesirable activities, but Government made a particular request in the body of the letter that his services should be dispensed with "without assigning any cause." As Government had full powers to require the removal of

the petitioner at will and was under no obligation to give reasons for the action that was proposed to be taken in regard to him, the Committee was in my opinion fully justified in putting an end to his services without putting him to the trouble and expense of defending himself at a hearing.

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Nor was the Provincial Government under an obligation to frame charges against the petitioner and to afford him an opportunity of being heard. Section 41 confers full powers on the Provincial Government to require a Committee to dismiss a Municipal Officer or servant if in the opinion of Government the said officer or servant is unfit for his employment. The language of this section makes it quite clear that the power of removal has been reposed by the Legislature in the discretion of the Provincial Government and that the said Government has been made the sole Judge of deciding, in exercise of its personal judgment whether a person is or is not fit for his employment. The Provincial Government has come to the conclusion, in the exercise of its personal judgment, that the petitioner in the present case is not fit for his employment and that his services should be dispensed with. It has been held repeatedly that no formal charges or hearings are as a rule required where the removal depends on the exercise of personal judgment on the question whether the cause of removal exists (*Trainor v. Board of Auditors* (1)). In *The Queen on the prosecution of George May Clerk, v. The Governors of the Darlington Free Grammar School* (2), school master was removed by the governors of a school. He sought the intervention of the Court and the Court held

(1) 89 Mich. 162; L.R.A. 95--

(2) 14 L.J. Q.B. 67, 71

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that the governors being at liberty to remove him at discretion the issues on the various instances of misconduct and the effects of opportunity not being given to answer the complaints were immaterial. In dealing with the authority of the founder to give the power of removal to the governors, the Court observed as follows :

“There seems nothing unreasonable in the founder giving such authority to the governors for there may be many causes which render a man altogether unfit to continue to be a schoolmaster, which cannot be made the subject of a charge before jury or otherwise, or of actual proof. A general want of reputation in the neighbourhood, and even suspicion that he has been guilty of the offence stated against him in the return-common belief of the truth of those charges among the neighbours might ruin the well-being of the school, if the master was continued in it, although the charge might be untrue, and, at all events, the proofs of the facts themselves insufficient before the jury. Many other similar grounds of removal, fully sufficient in the exercise of a sound discretion might also be suggested.”

There is another aspect of the matter which needs be considered and that is that if there is an inconsistency between the statute which declares that the Provincial Government shall have full power to demand the dismissal of an officer without enquiry and a statutory rule which declares that an enquiry shall be an essential prerequisite to an order of dismissal, it is obvious that the statute will take

precedence over the statutory rule and that the Court will give effect to the purpose of the statute and the intention of the Legislature.

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For these reasons I am of the opinion that as the Committee has put an end to the services of the petitioner under the orders of the Provincial Government and as the Provincial Government has passed its orders in exercise of its personal judgment, it was not necessary for the Committee to frame charges against him or afford him an opportunity of defending himself. I would dismiss the petition but would leave the parties to bear their own costs.

_____ Bhandari, C. J.

DULAT, J.—I agree.

Dulat, J.