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or more of that class or group could impugn the sale successfully and obtain possession on payment of the total sale price. Learned counsel for the appellants brought to our notice the observations made in *Niranjan etc.* v. *Kehru etc.*, Letters Patent Appeal No. 339 of 1961, decided on 10th of April, 1963. That case, with respect, seems to have been decided on its own facts and no specific rule on any proposition of law was intended to have been laid. The impugned judgment of the learned Single Judge is cogent and correct, and does not call for intereference. This appeal, thus fails and is dismissed. In the circumstances, however, we are inclined to leave the parties to their own costs.

B. R. T.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur and Gurdev Singh, JJ.

RAKESH KUMAR,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 720 of 1965.

1965

May, 21st.

Punjab Education Code (1956)—*Clause* 192—*Order suspending a student for misconduct—Whether amounts to expulsion or rustication—Period for which such an order can be passed—Whether can exceed one academic year—Order passed without affording an opportunity of being heard to the student—Whether valid—Principles of natural justice—Whether to be observed.*

Held, that the only penalty which can be imposed against a student for misconduct under clause 192 of the Punjab Education Code (1956) is one of expulsion or rustication. The order purporting to be of suspension is in substance that of rustication or expulsion and it cannot be passed for an indefinite period. The period of expulsion or rustication cannot exceed one academic year.

Held, that an order of suspension or expulsion passed against a student without affording him an opportunity of being heard, violates an essential principle of natural justice and is, therefore, invalid. The student is entitled to be heard on the principle of *audi alteram partem* as it affects his future, more so when there are two separate versions of the incident itself and the whole matter

is to be adjudicated upon by a Court of Criminal Jurisdiction. It would be idle to contend that the Principal in making the impugned order was only deciding a question of policy and no vital rights of the student were being affected. A vital decision was being taken from the point of view of the student and this was clearly a matter which fell for the application of the principle of natural justice.

Case referred by the Hon'ble Mr. Justice Gurdev Singh on 23rd April, 1965, to a larger Bench for the decision of an important question of law involved in the case. The case was finally decided by the Hon'ble Mr. Justice Shamsher Bahadur and the Hon'ble Mr. Justice Gurdev Singh on 21st May, 1965.

Petition under Article 226 of the Constitution of India praying that an appropriate writ, order or direction be issued directing the respondent to allow the petitioner to take the house examination meant for the 9th Class.

BABU RAM AGGARWAL, ADVOCATE, for the Petitioner.

J. S. WASU, ADVOCATE, FOR THE ADVOCATE-GENERAL, for the Respondents.

ORDER OF THE BENCH

SHAMSHER BAHADUR, J.—This petition of Rakesh Kumar under Article 226 of the Constitution of India came for hearing in the first instance before my learned brother (Gurdev Singh J.) and on his recommendation the matter has been placed before a Division Bench for disposal. Shamsher Bahadur, J.

In substance there is no dispute on the facts which gave rise to this reference. The petitioner, a student of ninth class in Government Multi-purpose Higher Secondary School, Patiala, resides with his father in the first floor of a building, the portion of whose ground floor is used as a Government dispensary. The father of the petitioner Dr. Ram Partap is in charge of this dispensary and there is a compound outside the dispensary. The dispensary is only in a portion of the ground floor of the building and in the other wing of it is a school. On 20th February, 1965, there was a scuffle between the petitioner and another boy of the school which is located on the ground floor. It would be useless for purposes of this petition to trace the origin of the fight and it would be sufficient to say that on an altercation between the petitioner and the other boy, three women

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teachers of the school came to the rescue of the latter. The petitioner who came to be assisted by his elder brother is said to have maltreated the teachers. There are two separate versions of this incident and the cross hurt cases are awaiting adjudication before a criminal Court. It is to be emphasised that the matter is still *sub-judice,* processes having been issued to both parties in the dispute. When the petitioner on 10th March, 1965, went to appear in the annual examination in his school (Government Multi-purpose Higher Secondary School) which is different from the one located on the ground floor of the building where the incident took place, he was handed over the following order addressed to his father. This order, which is Annexure 'A', is as follows:—

"Principal's Office,

Govt. Multi-purpose Higher Secondary School, Patiala.

Ref. No. 595 Dated 10th March, 1965.

My dear Dr. Sahni,

Your son, Rakesh Kumar, student of IXth class of this school, is suspended from the rolls of the school *vide* order of the Principal, State College of Education, Patiala, and subsequently *vide* this Office Order No. 284, dated 9th March, 1965, due to misconduct. So he cannot be allowed to take the examination commencing from 10th March, 1965.

This is for your information.

(Sd.) Principal."

The steps taken on behalf of the petitioner for restoration of his normal status as a student having failed, this Court has been moved under Article 226 of the Constitution for having the order embodied in Annexure 'A' quashed on the ground that it was passed *ex-parte* without any opportunity being afforded to him to show cause against it.

That the impugned order entails the consequences of a far-reaching nature can admit of no dispute. The suspension of the petitioner from the school is indefinite and though it is asserted by Mr. Wasu, the learned counsel for the respondent, that the suspension is only of a temporary nature and will not extend beyond the duration of the

criminal cases, the matter cannot be allowed to rest there.

The order of suspension purports to have been passed under clause 192 of the Punjab Education Code (1956 Edition) which is to this effect:—

> "The penalty of expulsion or rustication of a student for serious misconduct may be imposed in the case of (i) Government Colleges by the College Council, (ii) Government and local body schools by the Inspector or Inspectress as the case may be, and (iii) privately-managed schools by the Managing Body of the school.....In the case of schools the period of rustication or expulsion shall not exceed one academic year."

Concededly, the petitioner belongs to a Government school and falls under the second category for whom an order has to be passed by an Inspector or Inspectress. The impugned order is signed by the Principal and not by the Inspector. I will pass over this obvious defect in the order and for purposes of this petition it will be assumed that it has been passed by a proper authority. Even on that assumption it suffers from two defects—firstly, that it was passed without any opportunity being afforded to the petitioner and secondly, that being for an indefinite period it violates the condition imposed in clause 192 that the period of rustication or expulsion shall not exceed one academic year.

On behalf of the petitioner, it has been urged that the power of expulsion and rustication which has been euphemistically called 'suspension' has to be exercised by the appropriate authority in a quasi-judicial manner and it is no answer to say that the order of suspension has been made as a measure of discipline for the misconduct committed by the petitioner in assaulting women teachers of a school. According to Mr. Wasu, the authority which passed the order in Annexure 'A' did so in the exercise of executive functions and as a measure of discipline and consequently it cannot be challenged in the extraordinary jurisdiction of this Court under Article 226 of the Constitution. The matter being of importance, the learned Single Judge referred it for decision by a Division Bench.

The linchpin of the petitioner's case is the elementary rule of natural justice which enjoins that a party must be

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heard before any order affecting his interests is passed. This cardinal rule, also called "eternal rule" or the plainest principle of justice is thus stated by H. H. Marshall in his treatise on 'Natural Justice' (1959 Edition) at page 184:—

> "It is a part of natural law and of the common law of England, and, since it has in modern times come to be used almost exclusively as a comprehensive expression to describe the two procedural rules that no man shall be judge in his own cause and that both sides shall be heard, or *audi alteram partem*, it may be permitted to describe it as that part of natural law which relates to the administration of justice."

It has been settled by a long list of authorities in countries which follow the Anglo-Saxon system of jurisprudence that no person can be condemned unheard. The principle is pithily summarised in the case of *Board of Education* v. *Rice and others* (1), in which Lord Chancellor Lord Loreburn observed that such authorities as have to decide "must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything." An Inspector or a Principal, in the present instance, has to decide about the boy's future and it cannot be denied that the petitioner was entitled to be heard on the principle of *audi alteram partem*. Moreover, there are two separate versions of the incident itself and the whole matter is to be adjudicated upon by a Court of criminal jurisdiction. While the responsibility of the parties has to be determined and the matter is still *sub-judice*, the Principal has chosen to suspend the petitioner from school for an indefinite period on the specious and preconceived conclusion that he was guilty of misconduct in molesting women teachers of a school. As the order has been admittedly made under clause 192 it would be a futile exercise in semantics to determine whether it purported to be an order of suspension or is in substance one of rustication or expulsion. It is sufficient to say that the penalty which can be imposed under clause 192 is one of expulsion or rustication and the order must be so understood.

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(1) (1911) A.C. 179.

The relevant law has been reviewed in a Division Bench authority of the Orissa High Court in *Ramesh Chandra Sahu* v. *N. Padhy, Principal, Khallikote College, Berhampur* (2), in which a student of Khallikote College, Berhampur, challenged the validity of an order passed by the Principal expelling him from the College. Chief Justice Narasimham, delivering the judgment of the Court, held that:—

> "Both the English and American authorities seem to be agreed that even in disciplinary matters the head of an educational institution has no absolute discretionary power and that he must act reasonably and the aggrieved student must get an opportunity of being heard and of establishing his innocence, if he so desires."

Some of the Indian decisions referred to by the Chief Justice disclose a divergence of view as to whether an order of expulsion or rustication passed by head of an institution is a quasi-judicial or a purely administrative matter and this point of cleavage has been emphasised by Mr. Wasu, the learned counsel for the respondent, to contend that the order being of an administrative nature and not involving any quasi-judicial functions should not be interfered with in writ proceedings. I need cite only a few of the authorities which do not find a mention in the elaborate judgment of the Orissa High Court. The first one is a Supreme Court decision in *Province of Bombay* v. *Khushaldas S. Advani* (3), in which it was held that:—

> "When the executive authority has to form an opinion about an objective matter as a preliminary step to the exercise of a certain power conferred on it, the determination of the objective fact and the exercise of the power based thereon are alike matters of an administrative character and are not amenable to the writ of *certiorari*."

It is to be emphasised that their Lordships of the Supreme Court were concerned with a decision of the Government relating to a "public purpose" and it was found that such

(2) A.I.R. 1959 Orissa 196.
(3) A.I.R. 1950 S.C. 222.

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a determination does not involve the exercise of judicial or quasi-judicial functions and is purely an administrative act. In the present instance the Principal was imposing a penalty which may adversely affect the future career of a young lad and we cannot brush aside the import of the inhibition contained in Annexure 'A' as a mere act of an executive authority.

I find it necessary also to advert to a Supreme Court decision given after the judgment of the Orissa Court in *Board of High School and Intermediate Education, U.P., Allahabad*, v. *Ghanshyam Das Gupta and others* (4), where it was held that the determination by the Board of High School and Intermediate Education whether examinees had used unfair means in examination halls is of a quasi-judicial nature and principles of natural justice would require that the examinees should be heard in proceedings before the Committee. Mr. Justice Wanchoo, speaking for the Court, observed at page 1113 that:—

> "Now it may be mentioned that the statute is not likely to provide in so many words that the authority passing the order is required to act judicially; that can only be inferred from the express provisions of the statute in the first instance in each case and no one circumstance alone will be determinative of the question whether the authority set up by the statute has the duty to act judicially or not. The inference whether the authority acting under a statute where it is silent has the duty to act judicially will depend on the express provisions of the statute read along with the nature of the rights affected, the manner of the disposal provided..... and other indicia afforded by the statute."

Applying the principles so enunciated to the facts with which we are confronted, it is plain that in passing the order, which the Principal did, the rights of the petitioner had been affected to his prejudice and this, if nothing else, clearly envisaged that he should have at least called upon the petitioner to show cause against the order which was proposed to be made against him.

(4) A.I.R. 1962 S.C. 1110.

Reference may also be made to a recent House of Lords decision which like the Supreme Court authority mentioned aforesaid was given after the judgment in the *Orissa* case. The case in point is *Ridge* v. *Baldwin* (5). The appellant, who was chief constable of Brighton, was dismissed under section 191(4) of the Municipal Corporation Act, 1882, which provides that;—

> "The watch committee, or any two justices having jurisdiction in the borough, may at any time suspend, and the watch committee may at any time dismiss, any borough constable whom they think negligent in the discharge of his duty, or otherwise unfit for the same."

In 1957, the appellant was charged with other persons with conspiracy to obstruct the course of justice. At the trial, he was acquitted but the two other police officers were convicted. Relying upon some observations which fell from the trial Judge Donovan J., the watch committee resolved to dismiss him on the ground that "in the opinion of the committee" he had "been negligent in the discharge of his duty and is unfit for the same". No opportunity was ever afforded to the appellant to show cause against the order of dismissal. The appellant brought an action against the watch committee for a declaration that his dismissal had been illegal and void. Streatfield J. came to the conclusion that there was no need for the watch committee to do otherwise than they in fact did because "they did in fact act in a manner which was in accordance with the principles of natural justice, whatever else they might have done to be on the safe side". The Court of Appeal affirmed his judgment but on a different ground. It held that the watch committee, in exercising its power under section 191(4) of the Act of 1882, was performing an administrative function so that the principles of natural justice were not applicable. The House of Lords reversed this decision and Lord Reid observed at page 80 that :—

> "The body with the power to decide cannot lawfully proceed to make a decision until it has afforded to the person affected a proper opportunity to state his case."

(5) 1964 A.C. 40.

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In dealing with the case law on the subject, Lord Reid referred to *Wood* v. *Wood* (6), where Kelly C. B. said of *audi alteram partem*:—

> "This rule is not confined to the conduct of strictly legal tribunals, but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals,"

and also to the case of *Fisher* v. *Keane* (7), where Jessel M. R. said of the committee which had expelled a member in these words:—

> "They ought not, as I understand it, according to the ordinary rules by which justice should be administered by committee of clubs, or by any other body of persons who decide upon the conduct of others, to blast a man's reputation for ever—perhaps to ruin his prospects for life, without giving him an opportunity of either defending or palliating his conduct."

There is an observation of Lord Reid at page 72, which is singularly apposite to the facts of the instant case, to this effect:—

> "The Board of Works or the Governor or the club committee (may not be) deciding like a judge in a law suit, what were the rights of the person before it. But it was deciding how he should be treated—something analogous to a judge's duty in imposing a penalty.....So it was easy to say that such a body is performing a quasi-judicial task in considering and deciding such a matter, and to require it to observe the essentials of all proceedings of a judicial character—the principles of natural justice."

It would be idle to contend that the Principal in making the impugned order was only deciding a question of policy and no vital rights of the boy were being affected. A vital

(6) (1874) L.R. 9 Ex. 190.
(7) (1878) 11 Ch. D. 353.

decision was being taken from the point of view of the boy and on the high authority of the House of Lords this was clearly a matter which fell for the application of the principles of natural justice.

Another argument which has been raised by Mr. Wasu is also adequately dealt with in the judgment of Lord Reid in *Ridge* v. *Baldwin* (5). It is submitted that the Principal was not entrusted with the judicial duties and merely passed an order as a measure of discipline. In dealing with this matter, Lord Reid referred to the dictum of Lord Justice Atkin in *Rex* v. *Electricity Commissioners, Ex. Parte London Electricity Joint Committee Co.* (8), to this effect:—

> "The operation of the writs of prohibition and *certiorari* has extended to control the proceedings of bodies which do not claim to be, and would not be recognised as, courts of justice. Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

Something in the later authorities was superadded to this doctrine to imply that the body whose actions can be called for must be acting judicially. The gloss which has been put on the words of Lord Justice Atkin was deprecated by Lord Reid, who observed that there is not a word in Lord Justice Atkin's judgment to suggest his approval to the proposition that the principle of natural justice is not applicable to bodies or authorities which exercise executive functions. The conclusion reached by Lord Reid, to which I have already adverted, is that any person who has to reach a decision must do so after giving the person affected an opportunity to state his case. No such opportunity having been granted to the petitioner there is no reason, in my opinion, to sacrifice a great principle of natural justice at the altar of school discipline.

Reference may be made to the weighty authority of Mr. Justice Subba Rao, as a Judge of the Madras High

(8) (1924) 1 K. B. 171.

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Court, in *C. D. Sekkilar* v. *R. Krishnamoorthy* (9), where it was held that the principle of natural justice is an elastic conception especially when applied to educational institutions, and it is wrong to import the conception of 'lis' in the dealings of a Principal with his students. It must be emphasised that the learned Judge did not exclude the possibility of interference especially when the action of the authority concerned was arbitrary and due to *mala fide* exercise of discretion actuated by extraneous circumstances. The Principal, in dealing with one of his students, has considered a matter which was sub-judice and did not relate to the discipline of the institution itself. In such a case the principle of *audi alteram partem* cannot be lightly dispensed with and it behoved the authority to hear the petitioner who was adversely affected by the impugned order before passing it. The other authorities of the Allahabad High Court, cited by Mr. Wasu, have been fully reviewed by Chief Justice Narasimham in *Romesh Chandra Sahu* v. *N. Padhy* (2), and it is no longer necessary to deal with them at length. Suffice it to say that the discordant note struck in *Ram Chandra Roy* v. *University of Allahabad* (10), by the Division Bench of Bhargave and Mehrotra JJ., holding that in matters of discipline the head of an educational institution does not act as a judicial or quasi-judicial tribunal, and the orders passed by it in exercise of administrative functions are not capable of review in writ proceedings, has been impliedly overruled in the Supreme Court decision of *Board of High School and Intermediate Education, U.P., Allahabad* v. *Ghanshyam Das Gupta and others* (4). In fact, this judgment of the Supreme Court, to which I have already adverted, should be read as a postscript to the judgment of Chief Justice Narasimham in *Romesh Chandra Sahu's case.* The judgment of the Allahabad High Court which gave rise to the appeal decided in *Board of High School and Intermediate Education, U.P., Allahabad* v. *Ghanshyam Dass and others* (4), was mentioned in *Ramesh Chandra Sahu* v. *V. N. Padhy, Principal, Khallikote College, Berhampur* (2), and the view of Agarwala J., in *Ghanshyam Das Gupta and others,* v. *Board of High School and Intermediate Education, U.P., Allahabad* (11), was upheld. Agarwala J., to whom the matter had

(9) A.I.R. 1952 Mad. 151.
(10) A.I.R. 1956 All. 46.
(11) A.I.R. 1956 All. 539.

been referred on a difference of opinion between Raghubar Dayal and Brij Mohan Lall JJ., had held that the punishment awarded by the Board of High School and Intermediate Education in disqualifying examinees was in exercise of quasi-judicial functions as opposed to the concurrent opinion of the two differing Judges and further that an opportunity should have been given to the examinees before the order was passed, on which the two Judges had differed. Thus, even the Allahabad view which prevailed is the judgment of Agarwala J. affirmed, as it has been, by their Lordships of the Supreme Court.

On a review of the case law, I am of the opinion that the absence of an opportunity provided to the petitioner amounted to a denial of justice and a violation of an essential principle of natural justice. This petition will, therefore, be allowed and the impugned order quashed. The petitioner is entitled to the costs of this petition.

GURDEV SINGH, J.—I agree. Gurdev Singh, J.

K. S. K.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and R. S. Narula, JJ.

THE MUNICIPAL COMMITTEE, RAIKOT,—*Petitioner*

versus

SHAM LAL KAURA AND OTHERS,—*Respondents*

Civil Writ No. 1679 of 1962.

1965

May, 25th.

Mininmum Wages Act (XI of 1948)—Ss. 2(i) and 20—'Employee"—Definition of—Whether includes ex-employee—Application under section 20—Whether maintainable by an ex-employee—Punjab Minimum Wages Rules (1950)—Rules 24 and 25—Employer not governed by Factories Act—Normal working day of the employee—Whether of eight hours or nine hours.

Held, that the word "employee" as defined in section 2(i) of the Minimum Wages Act, 1948, does not include an ex-employee and that the only person who can maintain an application under section 20 of the Act is an employee who is in actual employment of the