CIVIL MISCELLANEOUS.

Before Bishan Narain and I. D. Dua, JJ.

ARJAN SINGH,—*Petitioner*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondent.*

Civil Writ No. 1397 of 1959

1960

May 20th

Punjab Municipal Act (III of 1911)—S. 41—Whether ultra vires *article 14 of the Constitution of India—Power under—Whether arbitrary and uncontrolled and therefore unconstitutional—Enquiry into unfitness of and show-cause notice to the employee before requiring termination of his service—Whether necessary—Constitution of India (1950)—Articles 12 and 13—Municipal servant—Whether entitled to the protection of Article 311—Article 14—Scope of—Discrimination—meaning of—Principles of natural justice—Essential features of—Whether applicable to service matters.*

Held, that section 41 of the Punjab Municipal Act, 1911 cannot be struck down as violative of Article 14 of the Constitution of India. Those employees, about whom the State has formed an opinion that they are unfit do form a class by themselves and there is thus no unconstitutional discrimination. There is also reasonable nexus between the object to be achieved and the impugned provision of law. The object of section 41 is to see that unfit persons are not retained in service by the Municipal Committee because or on account of ulterior or collateral motives, and for this reason if the State Government forms an opinion that an officer or an employee is unfit, the Government is empowered to direct his dismissal. This being the genesis of the section, it is difficult to hold it to be unconstitutional. Nor can the power be described to be arbitrary, for the simple reason that it is only when the State Government forms an opinion that a particular municipal employee is unfit for his employment that the committee can be required to dismiss him. Merely because the power is discretionary it cannot necessarily be considered to be discriminatory. It is also not uncontrolled because the control is implicit in

the power being exercised only if the State Government forms an opinion about the employee's unfitness for his employment. Moreover abuse of power is not easily to be assumed where the discretion is vested in the Government and not in a minor official.

Held, that the fact that by virtue of a bye-law the Punjab Civil Services Rules have been made applicable to the Municipal servants has nothing to do with the construction of section 41 of the Punjab Municipal Act in so far as it expressly confers on the State Government the power to demand punishment or dismissal of any officer or servant of the Committee on account of negligence in the discharge of his duties or unfitness for his employment. This section does not contemplate an inquiry by the State Government before holding a municipal employee to be unfit for his employment nor is a show-cause notice necessary to be issued to him. The provisions of this section cannot be said to violate the principles of natural justice as the State Government, while functioning under section 41, is not determining a *lis* and is not adjudicating on the respective rights of two or more contending parties. It has merely to see, under this provision, if a particular employee is a fit person to continue in service or if he should not be retained in service on account of unfitness for serving the municipal committee. No right vesting in the employee concerned is violated by the conclusion to which the State Government would thus arrive.

Held, that the expression "civil post under a State" in Article 311 of the Constitution of India does not include the post held by persons in the service of any local authority within the territory of the States. The expression "the State" has been defined in Article 12 of the Constitution only for the purpose of Part III of the Constituion which part deals with fundamental rights and consists of articles 12 to 35. This definition does not apply to the word "State" as used in Article 311 nor does it fit in with the language and contents of that article.

Held, that article 14 of the Constitution of India does not itself specifically speak of discrimination as such; discrimination specifically appears in articles 15 and 16. Article 14 merely provides that the State shall not deny to any person equality before the law or the equal prottction

of the laws within the territory of India. In other words it merely guarantees equality of status and opportunity. It, in substance, lays down that there shall be no privilege in favour of a person and that every one shall be equally treated in equal circumstances, the dominent idea being equal justice. It thus simply means that among equals the law should be equal and should be equally administered and that the like should be treated alike. But this does not by any means absolutely prevent the State from discriminating, and the State has full power of what is known as "classification" on the basis of rational distinction relevant to the particular subject dealt with. Mere differentiation or inequality of treatment does not by itself or *per se* amount to unconstitutional discrimination and in order to strike down a provision of law on this ground it must be shown that the selection or differentiation is unreasonable or arbitrary and that it does not rest on any rational basis, having regard to the object the Legislature had in view.

Held, that the essential features of the principles of natural justice is merely that no person should be deprived of any right by a judicial or a quasi-judicial order without a hearing before an independent authority, not interested in the proceedings or in any party to the proceedings. This can hardly apply to service matters. The exercise of the power to appoint or dismiss an officer is the exercise not of a judicial power but of an administrative power, and this is so even where, by virtue of statute or administrative rules, opportunity to show cause and an inquiry simulating judicial standards have to precede the exercise thereof.

Petition under Article 226 of the Constitution of India praying that an appropriate writ, direction or order be issued declaring the order of the Government, Punjab, dated, 9th December, 1959, and of the Administrator, Municipal Committee, Ludhiana, dated 11th December, 1959, as illegal, ultra vires, *void and having no support in law, and further declaring that the petitioner continues in service as before.*

H. S. GUJRAL, AND MR. RAJ KUMAR, Advocate, for the Petitioner.

HAR PARSHAD, Advocate, for Respondent 2.

M. S. PUNNUN, Deputy Advocate General for Respondent 1.

ORDER

I. D. Dua, J.

DUA, J.—This writ petition has been filed by Arjan Singh, who claims to be a qualified overseer and to have been appointed as a building inspector-cum-overseer by the Municipal Committee, Ludhiana, with effect from 1st of July, 1950. It is further averred that he was confirmed in the above post by the Administrator of the said Committee on 26th of January, 1951, and crossed the efficiency bar on 1st of January, 1959. It is then pleaded that although the petitioner had an unblemished career as a municipal employee ever since his appointment, his services were suddenly terminated by an order of the Administrator of the Committee, dated 11th of December, 1959, without any notice of any kind. It is admitted that this order of the Administrator terminating the petitioner's services was based on the order of the Governor of the Punjab under section 41 of the Punjab Municipal Act, 1911. It is thus order which is assailed in the present proceedings and it is alleged that according to bye-law No. 112 of the Business Bye-laws of Ludhiana Municipality framed under section 31(1) (b) of the Punjab Municipal Act, 1911, Punjab Civil Services Rules had been made applicable to the Ludhiana municipal servants, with the result that no confirmed municipal employee governed by those rules could be thrown out of his service without a regular inquiry into the charges levelled against him and without affording him a reasonable opportunity to show cause against his removal from service. This provision, the petition proceeds, has the effect of making the relevant rule of the Punjab Civil Services Rules a term and condition of the petitioner's service, a breach whereof is not permissible under the law. It is then pleaded that the petitioner had since 17th of October, 1955, been holding complete charge of the Municipal Engineer,

Ludhiana, and that a formal order of his appointment as Municipal Engineer in addition to his own duties with 30 per cent of the substantive pay as remuneration was ordered to be given to him from the above date; in other words from about two months prior to the order of termination of the petitioner's service. He has also mentioned Shri P. C. Khanna and Shri Kishori Lal, two other municipal employees, who were also proceeded against under section 41 of the Punjab Municipal Act, but from whom explanations were called before passing final orders.

On the foregoing grounds the petitioner claims that the order of the Government is contrary to law, *ultra vires* and violative of the rules of natural justice. The impugned order is also alleged to be *mala fide* and discriminatory.

Mr. Gujral has addressed elaborate arguments in support of the petition. To begin with, he has contended that under article 12 of the Constitution of India the expression "the State" includes *inter alia* . . . . . all local or other authorities within the territory of India or under the control of the Government of India. From this the counsel concludes that article 311 of the Constitution, which applies to all persons employed in civil capacities under the Union or a State, is also applicable to the petitioner, who is an employee of a local authority. I do not agree ; and indeed a bare reading of this article clearly shows the obvious fallacy of this contention. The expression "the state" has been defined in article 12 only for the purpose of Part III of the Constitution, which part deals with fundamental rights and consists of articles 12 to 35. It is thus obvious that this definition does not apply to the word "State" as used in article 311,

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and indeed the context also shows that the definition of the words "the State" as contained in article 12 does not fit in with the language and contents of article 311. As a matter of fact a Division Bench of this Court in *Mangal Sain* v. *The State of Punjab* (1), has also considered this question and has held that the expression "civil post under a State" does not include the post held by persons in the service of any local authority within the territory of the States. In *Smt. Ram Piari* v. *Municipal Committee, Pathankot* (2), Bishan Narain, J., has also ruled out the applicability of article 311 to a municipal employee. This contention on behalf of the petitioner thus fails and is repelled.

Mr. Gujral next contended that by virtue of bye-law No. 112 of the Business Bye-laws of the Ludhiana Municipal Committee, the Punjab Civil Services Rules, having been made applicable to the Ludhiana municipal servants, section 41 of the Punjab Municipal Act could not have the effect of depriving the petitioner of his right not to be dismissed or otherwise punished without a show-cause notice. The counsel wants us to hold that section 41 of the Punjab Municipal Act read along with the aforesaid bye-law must be deemed also to contemplate an inquiry by the Punjab Government before holding a municipal employee to be unfit for his employment. I again regret my inability to accede to this contention. Whether or not any bye-laws have provided for a notice to be given to a municipal employee before he can be punished or dismissed from service by the Municipal Committee, has nothing to do with the construction of section 41 of the Punjab Municipal Act in so far as it expressly confers on State Government power to demand punishment or dismissal of any officer

(1) A. I. R. 1952 Punj. 58.
(2) 1956 P. L. R. 289.

or servant of the Committee on account of negligence in the discharge of his duties or unfitness for his employment. I cannot read into this section a provision which the Legislature has in its wisdom not included.

The counsel then contended that section 41 is *ultra vires* the Constitution, because it is capable of being used in a discriminatory manner and, therefore, it must be struck down as violative of article 14 of the Constitution. This argument is in my opinion wholly untenable. It is clear that article 14 of the Constitution does not itself specifically speak of discrimination as such. Discrimination specifically appears in articles 15 and 16, and it is not the petitioner's case that either article 15 or article 16 applies to the impugned provision. Article 14 merely provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. In other words it merely guarantees equality of status and opportunity. It, in substance, lays down that there shall be no privilege in favour of a person and that every one shall be equally treated in equal circumstances, the dominant idea being equal justice. It thus simply means that among equals the law should be equal and should be equally administered and that the like should be treated alike. But this does not by any means absolutely prevent the State from discriminating, and in my opinion the State has full power of what is known as "classification" on the basis of rational distinction relevant to the particular subject dealt with. Mere differentiation or inequality of treatment does not by itself or *per se* amount to unconstitutional discrimination and in order to strike down a provision of law on this ground it must be shown that the selection or differentiation is unreasonable or arbitrary and that it does not

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rest on any rational basis, having regard to the object the Legislature had in view. The construction of article 14 is by now well settled. Recently in *Mahant Moti Das* v. *S. P. Sahi* (1), S. K. Das, J., who delivered the judgment of the Court, has thus described the scope of article 14 :—

> "The provisions of Article 14 of the Constitution had come up for discussion before this Court in a number of earlier cases [*see* the cases referred to in *Ram Krishna Dalmia* v. *S. R. Tendolkar* J. (2)]. It is, therefore, unnecessary to enter upon any lengthy discussion as to the meaning, scope and effect of the Article. It is enough to say that it is now well settled by a series of decisions of this Court that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation, and in order to pass the test of permissible classification, two conditions must be fulfilled, namely (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (2) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases such as, geographical, or according to objects or occupations and the like. The decisions of this Court further establish that there is a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to

(1) A. I. R. 1959 S. C. 942.
(2) A. I. R. 1958 S. C. 538.

> show that there has been a clear transgression of the constitutional guarantee; that it must be presumed that the legislature understands and correctly appreciates the needs of its own people and that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds; and further that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest."

In the light of these observations it is clear that section 41 cannot be struck down as violative of article 14. Those employees, about whom the State Government has formed an opinion that they are unfit, do, in my view, form a class by themselves and there is thus no unconstitutional discrimination. There is also reasonable nexus between the object to be achieved and the impugned provisions of law. As I construe section 41, its object is to see that unfit persons are not retained in service by the municipal committee because or on account of ulterior or collateral motives, and for this reason if the State Government forms an opinion that an officer or an employee is unfit, the Government is empowered to direct his dismissal. This being the genesis of the section, it is difficult to hold it to be unconstitutional.

But then the counsel has contended that this power is arbitrary and uncontrolled and should on this account be held to be unconstitutional. Here again it is difficult to agree with the counsel. This power cannot be described to be arbitrary, for the

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simple reason, that it is only when the State Government forms an opinion that a particular municipal employee is unfit for his employment that the committee can be required to dismiss him. It has also been settled by the Supreme Court that merely because the power is discretionary, it cannot necessarily be considered to be discriminatory: see *Messrs Pannalal Binra* v. *Union of India* (1), *Shri Harish Chand* v. *Collector of Amritsar* (2), *Ram Krishna Dalmia* v. *S. R. Tendokar* J. (3) and *Matajog Dobey* v. *H. C. Bhari* (4). It is also not uncontrolled because the control is implicit in the power being exercised only if the State Government forms an opinion about the employee's unfitness for his employment. Mr. Gujral, however, argues that this power is liable to be abused and, therefore, in that sense it is arbitrary and uncontrolled. This argument is inadmissible. It has authoritatively been laid down by the Supreme Court that a discretionary power is not necessarily a discriminatory power and abuse of power is not easily to be assumed where the discretion is vested in the Government and not in a minor official.

But then it is argued that even if the State Government has the power to form an opinion about the petitioner's unfitness and then to direct his dismissal, the State Government must not form any opinion prejudicial to the petitioner at his back and without giving him notice of the inquiry. This contention has for its basis, as the counsel puts it, the rule of natural justice. It is argued that the principle of natural justice requires that the petitioner should not have been condemned as unfit without a notice having been given to him to

(1) A. I. R. 1957 S. C. 397.
(2) A. I. R. 1959 Punj. 19 (F. B.).
(3) A. I. R. 1958 S. C. 538.
(4) (1955) 2 S. C. R. 925.

show that he was not unfit. This submission is seemingly attractive on the surface, but on a little deep scrutiny the fallacy underlying it becomes apparent.

The concept of natural justice is not capable of any precise and clear cut legal definition. The expression "natural justice" is sadly lacking in precision. Whether or not the rules of natural justice have been violated in a particular case must be determined in the light of the rights violated and of the constitution of the authority which has to function in accordance with the rules laid down by the Legislature, and in that sense the legislative rules themselves may vary. Now, in the present case it must not be forgotten that it is not claimed that the petitioner has any inherent or fundamental right to be employed by the Municipal Committee or to be continued to be so employed except in so far as the relevant rules may lay down. It is also agreed that the rules in question merely require that the Municipal Committee can punish or dismiss the petitioner only after giving show-cause notice and that there is no such condition expressly imposed on the State Government when acting under section 41 of the Punjab Municipal Act. Indeed the State Government while functioning under section 41 is not determining *a lis*, and is not adjudicating on the respective rights of two or more contending parties; it has merely to see, under this provision, if a particular employee is a fit person to continue in service or if he should not be retained in service on account of unfitness for serving the municipal committee. No right vesting in the petitioner is violated by the conclusion to which the State Government would thus arrive. It is true that the conclusion based on the

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opinion of the State Government may result in the employee's unemployment, but then whenever a candidate applies for a job and the prospective employer refuses to employ him, without requiring him to show cause as to why his application for employment should not be refused, almost similar result would follow. It can hardly be contended that omission to give such a notice, in the case of refusal to employ a person initially, attracts the applicability of the rule of natural justice. In the absence of any statutory provision or of any principle or binding precedent, I, for my part, do not see any real difference between the case of such initial refusal to employ a person and the termination of an employee's services.

Mr. Gujral has, however, contended that by his dismissal the petitioner suffers a disability of not being able to get into Government service again. This may or may not be so, depending as it does on the rules framed by the various Governments. But this by itself would not create a right in the petitioner which otherwise does not vest in him. The essential feature of the principle of natural justice is merely that no person should be deprived of any right by a judicial or a quasi-judicial order without a hearing before an independent authority, not interested in the proceedings or in any party to the proceedings. This in my opinion can hardly apply to service matters. It is not disputed that the exercise of the power to appoint or dismiss an officer is the exercise not of a judicial power but of an administrative power, and this is so even where, by virtue of statue or administrative rules, opportunity to show cause and an inquiry simulating judicial standards have to precede the exercise thereof. It is conceded that there is no rule or other provision of law applicable to

the instant case which enjoins the State Government to give a show-cause notice or to hold any other inquiry coming up to judicial standards before opinion under section 41 is formed. It is, therefore, not easy to apply the so-called rules of natural justice to the present case.

Mr. Gujral has placed reliance on a Bench decision of this Court in *Dr. Mukand Lal* v. *The Municipal Committee of Simla* (1) and particular support is sought from the following passage at page 111 :—

> "Even in the absence of any rules, the principle of natural justice should come into play, i.e., the maxim *audi alteram partem*—no man shall be condemned unheard—would be applicable."

This observation is wholly *obiter* and was not necessary for the purpose of the decision of that case. The judgment there proceeded on the interpretation of sections 39 and 45 of the Punjab Municipal Act, and section 41 nowhere figured in the discussion in that judgment. As a matter of fact section 41 directly came up for consideration before another Division Bench of this Court in *Ram Piara* v. *The Municipal Committee, Hoshiarpur*, (2), where it was expressly observed that no statutory obligation is imposed on the Provincial Government when it proceeds to demand the dismissal of a municipal officer under section 41, Punjab Municipal Act. This authority, being direct and on identical facts, is clearly binding on this Bench. Besides, we are also in respectful agreement with the law laid down in this decision.

On behalf of the petitioner reference was made to some other reported decisions, but none

(1) 1953 P. L. R. 100
(2) 1955 P. L. R. 1.

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of them deals with a provision like section 41 of the Punjab Municipal Act. *Ghulam Rasul* v. *State of Jammu and Kashmir* (1), was a case of a Government servant and, therefore, is hardly of any assistance. R. *Balakrishnan* v. *State of Madras* (2), deals with Cotton Textile (Control) Order and is obviously not helpful. *Dhirendranath Das* v. *State of Orissa* (3), is also a case of a Government servant and, therefore, not relevant. *Gian Chand* v. *State of Jammu and Kashmir* (4), also deals with a wholly different set of facts and is of no assistance. Reference was also made by Mr. Gujjral to *The State of West Bengal* v. *Anwar Ali Sarkar* (5), but the ratio of that decision does not, in my opinion, cover the case in hand. In the *State* of Punjab v. *Prem Parkash* (6), Bhandari, C.J., and G. D. Khosla, J. (as he then was) approvingly referred to *Mangal Sain's case* and held that the post of a Superintendent of waterworks could not be deemed to be a civil post under the State and the occupier of that post could not be said to be the holder of a civil post, the duties of the incumbent being exclusively related to the municipal committee. In *Kishori Lal Batra* v. *The Punjab State* (7), a Division Bench (S. S. Dulat and S. B. Capoor, JJ.,) following *Ram Piara's case* observed that in the absence of a contractual or statutory provision to the contrary a right vests in the master to terminate the services of his servant at any time without giving him any reasons for the same and that the same rule applies to officers of local authorities who can be removed at any time without notice or hearing and that such a right could be

(1) A. I. R. 1956 J. & K. 17
(2) A. I. R. 1952 Mad. 565.
(3) A. I. R. 1958 Orissa 96.
(4) A. I. R. 1957 J. & K. 32.
5. A. I. R. 1952 S. C. 75.
(6) 1957 P. L. R. 270.
(7) A. I. R. 1958 Punj. 402.

circumscribed only by a contract or statutory provision to the contrary. In the reported case the incumbent was an Executive Officer of the Municipality of Rohtak and was obviously not protected by any rules.

It is next contended by Mr. Gujral that the action of the State Government is *mala fide* because in the cases of two other employees although action was taken under section 41, show-cause notices were nevertheless given to them. Here again the contention is based on an obvious fallacy. Merely because another person has been given a notice which, under the law, it is not necessary to give, would not justify this Court in holding that the petitioner's rights have been illegally violated. But this apart, on the present record we are not satisfied that the cases of those two persons were similar to that of the petitioner. It is unnecessary to state that this Court is not called upon under article 226 of the Constitution to hold any elaborate enquiry into such allegations. As a matter of fact there are no facts specifically pleaded in the petition showing *mala fides* of the Governor who admittedly passed the order directing the Municipal Committee to terminate the petitioner's services. I need hardly repeat that there is always a presumption that the Government have performed their duties in a *bona fide* manner.

Finally in a half-hearted manner it was suggested that the Government has directed that the petitioner's services should be terminated, whereas the only power conferred on it is to direct dismissal of a municipal employee on the ground of unfitness for his employment. On this argument the impugned order, would seem so far as this grievance goes to be in favour of the petitioner—rather than to his prejudice—and indeed the

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learned counsel found it difficult to develop the argument and to show how an order of termination of services could be said to be outside the scope of section 41 of the Punjab Municipal Act.

For the reasons given above this petition fails and is hereby dismissed. In the circumstances of the case, however, I should not like to burden the petitioner with costs of these proceedings.

Bishan Narain, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS.

Before D. K. Mahajan, J.

DR. MOOL RAJ,—*Petitioner.*

versus

ANJUMAN IMDAD BHAMI BAFJNDGAN AND ANOTHER,—*Respondents.*

Civil Writ No. 590 of 1960

1960

May 24th

Constitution of India—Article 226—Petition for grant of writ dismissed in limine—*Second petition on the same facts —Whether competent—Rules of* res judicata—*Whether applicable—Successive writs of* habeas corpus—Whether *competent.*

Held, that it is now beyond question that the rule of *res judicata* is not confined to section II of the Code of Civil Procedure. It is a rule of general application and is based on a sound principle. On the same facts no person can be twice harassed. So far as successive petitions under Article 226 of the Constitution on the same fact and the same cause of action are concerned, the rule of *res judicata* is applicable. These writs of *habeas corpus,* however, stand on a different footing and successive writs of *habeas corpus* are competent. The rule is rather strict in the case of writs of mandamus. Where a first application for mandmus is refused on the ground of want of demand and refusal of justice, a second application after demand and refusal is incompetent.