Sub-section (2) of this section reads thus :—

"Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trials and recording evidence in summons cases."

(7) From the reading of both these sub-sections, I am clearly of the opinion that the provisions of sub-section (2) of section 117 of the Code of Criminal Procedure, are not mandatory and I am inclined to agree with the view taken by the Allahabad High Court in *Asghar Khan's case* (1). To the similar effect is the case relied upon by Shri Toor. I am not inclined to agree with the view taken in *Tejaram's case* (4). The said authority has not taken note of the provisions of section 117(1) and has also not considered whether the provisions of sub-section (2) of section 117 of the Code are mandatory or directory. Keeping in view the scheme of the Code of Criminal Procedure concerning the trial of the cases under section 107 of the Code, I am of the opinion that the provisions of sub-section (2) of section 117 of the Code are not, mandatory but are directory.

(8) Having come to the conclusion as above, I am clearly of the opinion that the learned Magistrate, after having recorded the evidence of two witnesses, had come to the finding that there was no threat to the life of the complainant and he was justified in terminating the proceedings under section 107 of the Code of Criminal Procedure.

(9) In this view of the matter, the reference made by the learned District Magistrate, Rupar, is declined and the revision petition is dismissed.

R.N.M.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

RAJ PAUL,—*Petitioner.*

versus

THE ADMINISTRATOR, MUNICIPAL COMMITTEE, MANDI DABWALI AND OTHERS,—*Respondents.*

Civil Writ No. 1317 of 1967

February 18, 1970.

Punjab Municipal Act (III of 1911)—Section 39—Municipal employees drawing salary of more than Rs. 40 per mensem—Municipal President—Whether can take proceedings for dismissing or terminating services of such

employees—Punishing authority while serving charge-sheet—Whether can propose punishment therein.

Held, that the President of a Municipal Committee cannot take proceedings for dismissing or terminating the services of a municipal employee drawing more than Rs. 40 per mensem. The action for suspension, serving a charge-sheet and holding an enquiry has to be taken by the Municipal Committee in a meeting. The President cannot, on his own, suspend such an employee or serve a charge-sheet or hold an enquiry. (Para 3).

Held, that the punishing authority, while serving a charge-sheet, cannot propose the punishment as if the charges have been proved.

(Para 4).

Petition under Articles 226 *and* 227 *the Constitution of India, praying that a writ of* certiorari, mandamus *or any other appropriate writ, order or direction be issued, quashing the orders of Respondents No.* 1 *and No.* 3, *dated* 19*th September,* 1966 *and* 14*th April,* 1967, *respectively.*

CH. ROOP CHAND, ADVOCATE, for the Petitioner.

M. K. MAHAJAN, ADVOCATE, for Respondents 1 and 2.

JUDGMENT

Tuli, J.—The petitioner, Raj Paul, was appointed Sanitary Inspector-cum-Food Inspector of the Municipal Committee, Dabwali, under section 39 of the Punjab Municipal Act, and was confirmed in that post in 1956, after getting the sanction of the Deputy Commissioner, Hissar. On May, 18, 1966, the petitioner submitted an application for leave from that date to May 21, 1966, supported by a medical certificate, but before it was sanctioned, he left the office. This application was rejected by the Vice-President. The petitioner sent another application on May 23, 1966, asking for extension of his leave upto May 31, 1966, which was supported by a medical certificate. Still another application for extension of leave upto June 5, 1966, was sent by him on May 28, 1966. On June 3, 1966, the petitioner put in another application for extension of leave from June 6, 1966, to June 30, 1966. All these applications were rejected. Shri Des Raj Garg, President of the Municipal Committee, acting under section 35 of the Punjab Municipal Act, 1911 (hereinafter called the Act), suspended the petitioner on May 26, 1966, for the reason that he absented himself and proceeded outside without getting his leave sanctioned and thus infringed the rules. Moreover, he was saving himself from the

police investigation. On June 7, 1966, a charge-sheet against the petitioner was prepared and it was delivered to him personally in the Municipal Office on June 25, 1966. This charge-sheet is in Hindi and a free translation of it in English is as under :—

> "You proceeded on leave without getting it sanctioned. You should, therefore, explain why you did so and did not furnish your complete address.
>
> You did not obtain the permission to leave the station while it was incumbent on you to inform the Municipal Committee before leaving the town.
>
> 3. You refused to accept the suspension order and have not made over the charge so far due to which the work is suffering for which you are wholly liable.
>
> 4. It has also come to light that a police enquiry is being conducted against you and it was to evade that enquiry that you absented yourself.
>
> You should, therefore, explain as to why your services may not be terminated. The reply to every item of the charge-sheet should be furnished within a period of three days from the receipt of the charge-sheet failing which it will be presumed that you do not want to furnish any reply and you are at fault."

The petitioner sent a reply to the charge-sheet on June 30, 1966. The matter with regard to the suspension of the petitioner was placed before the Municipal Committee in its meeting held on August 7, 1966, and the order of suspension made by the President on May 26, 1966, was confirmed. On September 2, 1966, the petitioner filed an appeal before the Deputy Commissioner, Hissar, against the suspension order passed by the Municipal Committee, Dabwali, *vide* resolution No. 6 dated August 7, 1966. The President of the Municipal Committee, on September 3, 1966, issued a letter to the petitioner stating —

> "The replies to the charge-sheet were received and gone through. The replies are not convincing ones, so you are

advised to appear before the undersigned on 6th September, 1966 at 11.00 a.m. in the Municipal Office along with the evidence and documents to support your case."

The President held the enquiry against the petitioner on September 9, 1966, and September 15, 1966. On the former date, the petitioner was asked as to why he left the office without obtaining leave and without getting the station leave sanctioned. In reply to that question, the petitioner made a statement which is recorded in Urdu and a free translation of which in English is as under :—

"I have solid proof regarding the reply submitted by me in reply to the charge-sheet and the appeal preferred by me to the Deputy Commissioner with a copy to the Municipal Office. I want to submit the detailed reply regarding all these matters before all the members of the Committee in a meeting so that I may get full justice. I have no confidence to get justice at your hands, as you and your partymen have devised a plan to force me and my children to starvation by concocting a false case against me on the basis of party faction. You have tutored your own men to give evidence and put in affidavits against me and have made up a case against me. In the end I again submit that whatever proof I am required to adduce and whatever enquiry is to be made from me, I shall present the same in a meeting of the Committee attended by all the members."

The President did not record any evidence and on September 15, 1966, made a report in which he stated that the statement of the petitioner recorded on September 9, 1966, disclosed that he had no defence to adduce and accordingly the charges levelled against him were correct. The report is in Urdu, a free translation of which in English is as under:—

"The certificate of illness produced by him cannot be admitted as genuine on the ground that he had filed a similar application in the Sessions Court and had got himself released on interim bail. The bail bond was later on cancelled by the Sessions Court on his failure to produce a genuine certificate regarding his illness as a result of which he was arrested. It proves that Raj Paul was not actually ill and

his applications for grant of leave were not genuine and he did so in order to evade his arrest. He had been trying to get himself released on bail during those days and was not at all ill. It means that he filed false applications in the Committee and thus played a fraud on it.

At present there is a case regarding illegal gratification registered against him with the police, as is clear from the police report. He has been arrested in that case as well and is now on bail. Some applications were already received against him regarding corruption and so he does not enjoy good reputation amongst the general public.

In view of the circumstances, explained above, I am of the opinion, that it is not desirable to retain such a person in service in the interest of the Committee and the public. Hence he may be dismissed and another person may be posted in his place so that the work of the Committee can go on smoothly."

This report of the President was placed in a meeting of the Municipal Committee held on September 19, 1966. A resolution was passed stating that the entire record including the report of the President had been perused and the charges levelled against the petitioner were held to be proved. Accordingly, in the interest of the Municipal Committee and the public, the petitioner's services were terminated with effect from September 19, 1966, afternoon, and it was resolved that the sanction of the Deputy Commissioner may be obtained. Five members of the Committee opposed this resolution. Against this order of the Municipal Committee terminating his services, the petitioner filed an appeal before the Deputy Commissioner, Hissar. His appeals against the order of suspension and against the order terminating his services were heard by the Sub-Divisional Officer and dismissed on April 14, 1967. The petitioner then filed the present writ petition in this Court on June 26, 1967.

(2) The return to the writ petition has been filed by the President of the Municipal Committee for himself and on behalf of the Municipal Committee.

(3) After hearing the learned counsel on both sides, I am of the opinion that the entire procedure adopted by the President of the Municipal Committee, in suspending the petitioner, serving a charge-sheet on him, holding an enquiry and making a report, was against

the provisions of the Act and the Rules on the subject. Under section 39 of the Act, the power to employ officers and servants for the Municipality vests in the Municipal Committee and not in the President. For the appointment of Sanitary Inspectors, there are specific rules which are contained in Punjab Government Notification No. 259 dated April 21, 1915 and Punjab Government Notification No. 22893 dated July 30, 1930. According to rule 5, the appointment of a Sanitary Inspector is to be made by the Municipal Committee. The Municipal Committee, Dabwali, has framed bye-laws for conducting its business and in rules 60 to 71, the powers of the President have been enumerated. Rule 66 is as under :—

> "66. The President may sanction all appointments carrying a pay of Rs. 40 per mensem and without reference to the Municipal Committee may dismiss any servant so appointed for misconduct or negligence of duty or any other default."

It is thus clear that the President could not take proceedings for dismissing or terminating the services of the petitioner under any such business bye-law as he was drawing a salary of more than Rs. 40 per mensem. The action for suspension, serving a charge-sheet and holding an enquiry had to be taken by the Municipal Committee in a meeting. The President could not, on his own, suspend the petitioner or serve a charge-sheet or hold an enquiry. There was no emergency for suspending the petitioner which required any action to be taken by the President. According to him, the petitioner had absented from duty without leave. The action in respect thereof could be taken against him by summoning a meeting of the Municipal Committee. The action taken by the President in this behalf was, therefore, without jurisdiction and has to be quashed.

(4) The charge-sheet served by the President on the petitioner is also liable to be quashed on the ground that the proposed punishment was mentioned therein. The punishing authority, while serving a charge-sheet, cannot propose the punishment as if the charges had been proved. Reliance has been placed on a judgment of their Lordships of the Supreme Court in *Khem Chand* v. *Union of India and others*, (1), wherein, after stating several charges the documents concluded as follows :—

> "You are, therefore, called upon to show cause why you should not be dismissed from the service. You should

(1) A.I.R. 1958 S.C. 300.

also state in your reply whether you wish to be heard in person or whether you will produce defence. The reply should reach the Assistant Registrar, Co-operative Societies, Delhi, within ten days from the receipt of this charge-sheet."

Dealing with this document, their Lordships of the Supreme Court, after considering the decision of the Judicial Committee, in *High Commissioner for India* v. *I. M. Lall,* (2), held that the second opportunity to show cause should be given to the Government servant after a stage had been reached where the charges had been established and the competent authority had applied its mind to the gravity or otherwise of the proved charges tentatively and proposed a particular punishment. Thereafter their Lordships observed as under :—

"This procedure also has a merit of giving some assurance to the officer concerned that the competent authority maintains an open mind with regard to him. If the competent authority were to determine, before the charges were proved, that a particular punishment would be meted out to the Government servant concerned, the latter may well feel that the competent authority had formed an opinion against him, generally on the subject-matter of the charge or, at any rate, as regards the punishment itself. Considered from this aspect also the construction adopted by us appears to be consonant with the fundamental principle of Jurisprudence that justice must not only be done but also be seen to have been done."

Following this judgment of their Lordships, a learned Single Judge of the Calcutta High Court (B. C. Mitra, J.) in *Gouri Pr. Ghosh* v. *State of West Bengal and others,* (3), held:

"The principles on which the show-cause notice is required to contain only the charges and not a finding of the guilt or a proposal as to the punishment to be imposed if the guilt is proved, are well settled and they have been discussed by me earlier in this judgment. These principles require that an open mind should be kept with regard to

(2) 75 I.A. 225.
(3) 1968 S.L.R. 625.

the charges made against a Government servant until the charges are proved. If such an open mind is not kept, but the enquiry is held on the assumption that the Government servant is guilty of the offence with which he is charged, and also that he is liable to a particular punishment, such an enquiry must be held to have been made in violation of the principles of natural justice. It was on these grounds that notice which included not only the charges against a Government servant but also a finding as to his guilt and also a statement of the proposed punishment had been struck down by Courts.

It is true that in the instant case a second show-cause notice was issued calling upon the petitioner to show cause why the penalty of dismissal should not be imposed upon him. But, in my view, the issue of such a show-cause notice after the report of the enquiring officer cannot save the first show-cause notice from being held to be totally invalid. The principle underlying the doctrine is well established, namely, that an open mind must be kept not only on the question of the guilt of a Government servant, but also on the question of the punishment to be imposed, if the charges are proved. The doctrine is clearly violated if a show-cause notice, in which not only the charge, but also the punishment proposed is mentioned. In my view, having regard to the observations made in the several cases discussed above, the show-cause notice must be held to be bad."

(5) The President could not appoint himself as the Enquiry Officer without a resolution of the Municipal Committee. The petitioner, therefore, rightly refused to appear before him or to take part in the enquiry, so that the enquiry held by the President was null and void and so is his report dated September 15, 1966. The resolution of the Municipal Committee passed on September 19, 1966, on the basis of that report also falls along with the report. The resolution of the Municipal Committee passed on August 7, 1966, approving the order of suspension passed by the President against the petitioner was also bad and has to be quashed. The Sub-Divisional Officer, while dealing with the appeals of the petitioner, did not set out the facts in their true perspective. He has mentioned

that the Municipal Committee served a charge-sheet on June 25, 1966, on the petitioner whereas the charge-sheet had been issued by the President alone without any reference to the Municipal Committee. The action taken by the President suspending the petitioner under section 35 of the Act had to be approved in the next meeting of the Committee. This requirement of the law was also not complied with. The first meeting of the Municipal Committee, after May 26, 1966, was held on May 28, 1966, but no resolution was passed therein approving the order of suspension passed by the President on May 26. 1966. The next meeting was held on June 28, 1966, wherein no business could be transacted for want of quorum. The third meeting was held on July 5, 1966, wherein the order of suspension was placed for confirmation but was not confirmed due to lack of time. The order was finally confirmed in the meeting held on August 7, 1966. For the breach of the statutory mandate contained in section 35 of the Act, the resolution confirming the order of suspension is bad in law.

(6) The learned counsel for the petitioner has lastly argued that no show-cause notice against the proposed punishment was issued to the petitioner after the report of the President on the enquiry and the Municipal Committee passed the resolution on September 19, 1966, without issuing any notice to the petitioner or hearing him in his defence. The majority of the members relied on the report of the President who had based it on his own personal knowledge and not on any evidence recorded by him. The President also took into consideration extraneous matters while making his report and holding the petitioner guilty which were never put to the petitioner. For example, the petitioner was never told that his bail bond had been cancelled by the Sessions Court on his failure to produce a genuine certificate regarding his illness and inference was drawn from that fact that the applications for leave put in by the petitioner were not genuine. Another factor taken into consideration was that a case regarding illegal gratification was pending against him with the police and that some applications had been received against him alleging corruption and so he did not enjoy good reputation in the general public. The petitioner had no opportunity to rebut these extraneous considerations which were never put to him in the charge-sheet. In *Amar Nath* v. *The Commissioner and others* (4), I had quashed the order of the Administrator who had taken into consideration the previous record of the

(4) 1969 C.L.J. 484.

employee while imposing the sentence without putting that record to him, relying on the judgment of their Lordships of the Supreme Court in *The State of Mysore* v. *K. Manche Gowda,* (5). On the same reasoning, the report of the President as Enquiry Officer dated September 15, 1966, and the resolution passed by the Municipal Committee on the basis thereof are liable to be quashed.

(7) For the reasons given above, this writ petition is allowed with costs and the resolution of the Municipal Committee, passed on August 7, 1966, suspending the petitioner, and resolution dated September 19, 1966, terminating his services, are hereby quashed. The order of the Sub-Divisional Officer rejecting the appeals of the petitioner is also quashed. It will, however, be open to the Municipal Committee to take action against the petitioner in accordance with law, if it is considered proper. Counsel's fee Rs. 100.

R.N.M.

CIVIL MISCELLANEOUS

Before Mehar Singh, C.J., and Narula, J. (on a point of reference)
Before Bal Raj Tuli, J. (on merits)

D. S. GREWAL,—*Appellant.*

versus

PUNJAB STATE,—*Respondent.*

First Appeal From Order No. 119 of 1966

February 19, 1970.

Punjab Requisitioning and Acquition of Immovable Property Act (XI of 1953)—Sections 8(1)(b) and 8(2)—Appointment of Senior Sub-Judge as arbitrator—Whether valid—Transfer of such Senior Sub-Judge—Successor equally qualified to be appointed as arbitrator—Fresh notification for appointment as arbitrator—Whether necessary—Determination of compensation payable for the requisitioned property—Mode of—Stated—Fair rent of the property—Whether to be taken into consideration.

Held (per Mehar Singh, C.J. and Narula, J.).—That a notification issued by the State Government under section 8(1) (b) of the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953, appointing a Senior Subordinate Judge as an arbitrator to give an award in regard to the matter of compensation is not bad, as the notification does not make appointment of the office of the Senior Subordinate Judge as the arbitrator,

(5) A.I.R. 1964 S.C. 506.