limited owner. It is true that the sale has been held to be without necessity in the present case and it has been avoided successfully by the collaterals. This circumstance, however, cannot restore the possession of the property to Mst. Puni on the date that the Act came into force to enable her to hold it in future as full owner. The transaction is binding on her during her lifetime and she has no rights left in this property on account of the sale. Neither under custom nor under any provision of law this property which has been sold outright by her can revert to her. In my opinion section 14 contemplates that if at the time the Hindu Succession Act, 1956, came into force a female Hindu was possessed of any property, then she shall hold it in future as full owner. This provision of law will not restore to her any property or any rights in the property which she had parted with before the Act came into force. It is, therefore, clear that this section can have no applicability to the present case. The contention of the learned counsel for the appellants therefore has no force.

The result is that this appeal fails and is dismissed with costs.

Chopra, J.—I agree. Chopra, J.

APPELLATE CIVIL

Before Chopra, J.

CHINT RAM,—*Plaintiff-Appellant*

v.

THE SMALL TOWN COMMITTEE, SUJANPUR,—*Defendant-Respondent*

1956

Dec. 13th

Civil Regular Second Appeal No. 553 of 1952.

Punjab Small Towns Act (II of 1922)—Sections 11, 4(2), 51—Small Towns Appointment, Suspension and Dis-

missal Rules, 1925, Rule 3(1)—Servant employed on temporary basis—Dismissal of—Rule 3(1), whether applicable—Rule of natural justice regarding opportunity to show cause whether applies to temporary employees—Chairman—Right of exercising casting vote—Employment of servants—Small Town Business Rules, whether part of the contract of service.

Held, that the rule regarding an opportunity to show cause applies only when a person holds a substantive appointment. The rule not only requires that the post should be permanent but that the employee should hold it on permanent basis. The rule of natural justice regarding opportunity to show cause does not apply to persons holding office on a temporary basis. Employment on a temporary basis or for a fixed period carries with it the implied condition that the servant shall prove his fitness for the job and work to the satisfaction of his master. In case he fails, his services are liable to be terminated at the expiry of the period or at the pleasure of his master, without assigning any reason.

Held further, that the Chairman of a Small Town Committee can exercise his vote as a member and in the case votes are equally divided he can exercise a second vote as a casting vote.

Held also, that the Small Town Business Rules are not part of the contract between the committee and its servants. The Committee while engaging a servant does not make it a part of its contract with him that in the conduct of its business it shall strictly observe the then obtaining regulations or that he will not be affected by any modification that may subsequently be made.

Second Appeal from the decree of the Court of Shri Sheo Parshad, Senior Sub-Judge, with enhanced appellate powers, Gurdaspur, dated the 30th April, 1952, affirming that of Shri D. P. Sodhi, Sub-Judge, 1st Class, Pathankot, dated the 1st March, 1951, dismissing the plaintiff's suit with costs throughout.

H. L. Sibbal, for Appellant.

D. K. Mahajan, Daljit Singh and Shamair Chand, for Respondent.

JUDGMENT.

CHOPRA, J. This is an appeal by the plaintiff whose suit for a declaration that the resolutions and orders of the defendant-committee suspending and dismissing him from its service as Secretary are *mala fide,* void and inoperative and as a consequential relief for an injunction restraining the Committee from preventing the appellant to act as the Secretary, was dismissed by the trial Sub-Judge and also on appeal by Senior Subordinate Judge, Gurdaspur. Chopra, J.

Chint Ram, appellant was appointed Secretary of the Small Town Committee, Sujanpur, respondent, on temporary basis for three months,—*vide* resolution (Exhibit D-1), dated 4th September, 1948. By a second resolution, dated 23rd January, 1949, the period was extended for another three months ending on 9th March, 1949. The appellant continued to act as Secretary even after the expiry of this period, though no order for further extension or confirmation was made. On 11th August, 1949, Chint Ram proceeded on one week's leave. He did not rejoin and his application for further leave was refused. By resolution, dated 3rd September, 1949 (Exihibit D-4), Chint Ram was suspended for a period of one month. The period was extended till the completion of audit by another resolution (Exhibit D-6), dated 30th September, 1949. Chint Ram instituted the present suit on 15th October, 1949, challenging the validity of the two resolutions of his suspension. Subsequently, he was dismissed from service with effect from 1st November, 1949, by a resolution of the Committee (Exhibit D. 8), dated 31st October, 1949. Chint Ram then amended the plaint and prayed for a similar declaration with respect to this resolution as well. The three resolutions were alleged to be 'illegal, void, capricious, *ultra*

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vires, arbitrary and oppressive.' They were sought to be set aside and a prayer for injunction restraining the defendant-Committee from preventing the plaintiff to act as its Secretary was also made. The Committee's case is that the plaintiff was a temporary employee, his services as such could at any time be terminated, and that he was suspended and later on dismissed because his work was found to be unsatisfactory, he was guilty of insubordination and he remained absent without leave. It was submitted that the resolutions were quite in order and duly adopted. The material points on which the parties were at variance have been decided against the plaintiff and the suit dismissed by the Courts below.

The resolutions suspending the appellant lost their significance because of the subsequent dismissal order. Consequently, it is only the last resolution which is being attacked.

Mr. Sibal, learned counsel for the appellant, in the first instance, contends that the resolution was bad and ineffective inasmuch as it directed dismissal of the appellant without affording him any opportunity whatsoever to explain his position or to meet the charge against him, as required by the Rules framed under sections 14(2) and 51 of the Punjab Small Towns Act (No. II of 1922). Section 14(2) of the Act authorises Small Town Committees to suspend or dismiss any of their employees, but this power is made subject to the rules framed by the State Government in this behalf. Section 51(1)(d) gives the rule making power to the Government, *inter alia*, for regulating the appointment, dismissal or suspension by the Small Town Committees of their officers and servants. The Small Town Appointment, Suspension and Dismissal Rules, 1925, were framed in exercise of this

power. Rule 3(1) of these Rules enjoins that "when it is proposed to dismiss any officer or servant of a Committee, the charges against him shall be framed in writing, and, together with the evidence in support of them, shall be explained to him; his statement and any evidence which he may produce in his defence shall be recorded, and a separate finding shall be recorded in respect of such charge." Admittedly, the procedure laid down in this rule was not observed. It is, therefore, submitted that the dismissal order was without authority and it ought to have been set aside.

The difficulty in the way of the appellant, however, is that the above rule, as provided by rule 1, comes into play only when an officer is dismissed or permanently removed from a *substantive* appointment. Mr. Sibal, in the first place, faintly urged that although originally the appellant was appointed on temporary basis and for a fixed period, yet since he was allowed to continue as the Secretary even after the expiry of that period his employment ought to be regarded as confirmed. The contention is simply unacceptable. As already observed, no order for his confirmation or to treat his services on a permanent basis was ever made. He simply continued to work as before, and on the same conditions. That by itself would not improve his status or alter the nature of his appointment.

It is then submitted that the appellant was holding substantive post "independently and in his own right" and, therefore, he could be regarded as holding a substantive appointment. There is no force in this contention either. The rule not only requires that the post should be permanent, but the employment on that post should also be on permanent basis. Substantive appointment of a Government servant on a permanent post alone

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gives him a lien on that post (Rule 3.12, Punjab Civil Services Rules, Vol. I, Part I). An officer employed on temporary or officiating basis does not acquire a clear legal right to the post on which he is employed. Admittedly, article 311 of the Constitution has no application to the present case. The Small Town Appointment Suspension and Dismissal Rules also are not applicable, for the appellant was not holding any substantive appointment. There was thus no contravention of any statutory or contractual provision.

The rules of natural justice also are of no help to the appellant.. Employment on temporary basis or for a fixed period carries with it the implied condition that the servant shall prove his fitness for the job and work to the satisfaction of his master. In case he fails, his services are liable to be terminated at the expiry of the period or at the pleasure of his master, without assigning any reason. The servant shall not be entitled to any notice, unless it was so contracted or is provided by any rule or law. The appellant did not rejoin even after his application for extension of leave was rejected, he was not only found to be incompetent but insubordinate as well. His master, therefore, did not deem it fit to confirm him, but decided to terminate his services.

It is next contended that the resolution was not validly and properly adopted. This is stated to be for two reasons: (1) that the Chairman of the meeting exercised two votes, once as a member and then as a chairman, and (2) that the members were not supplied the agenda three clear days before the meeting. On the first point, the argument is that the chairman can have only one vote, exercisable only in case of equal division of votes. The contention is without force. Section 10 of

the Punjab Small Towns Act, provides for the conduct of business in the meetings and lays down:—

> "Every committee shal meet at least once a month for the transaction of business. The president or in his absence the vice-president shall preside as chairman at all meetings, and if there be no president or vice-president present, then such one of their number as the members present may elect shall preside as chairman. The chairman of the meeting shall have a casting vote in the event of the vote of the members present being equally divided on any question which may come before the meeting."

The chairman, even though he be the elected president or vice-president, does not cease to be a member of the Committee. In the absence of a clear provision to the contrary, he would be entitled to vote as a member. After he has so voted, if it be found that the votes are equally divided, the chairman can declare the proposed resolution to be carried or dropped by exercising his casting vote. The section not only does not make any provision to the contrary, but impliedly allows additional or casting vote to the chairman in case of an equal division. Section 29 of the Punjab Municipal Act, expressly accepts this rule, and says:—

> "Except as otherwise provided by this Act or the rules, all questions which come before any meeting of a committee shall be decided by a majority of the votes of the members present, the chairman of the meeting in case of an equality of votes, having a second or casting vote."

A contrary provision is found to be made in Article 100 of the Constitution which lays down that the

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chairman or the speaker or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

As regards the second point, reliance is placed on rule 2(1) of the Small Town Business Rules, 1924. The rule reads:—

> "When a meeting is to be convened notice thereof shall be sent to members ordinarily three clear days before the date of the meeting, and in any case at least one clear day before such date. It means that the day of issue of notice on the day on which the meeting is to be held are excluded from the counting of three days requisite for a notice. Ordinarily means generally and "in case" means when a meeting is called emergently."

The agenda and notice for the meeting of 31st October, 1949, was supplied to the members on 28th October, which means two clear days before the meeting was held. It is correct that neither in the notice nor in the minutes the meeting was described as emergent. The question then is whether, on account of this irregularity, the entire proceedings are to be held as illegal and ineffective, and the plaintiff ought to be granted a declaration that he was never dismissed and also the injunction prayed for. My answer would surely be in the negative. The rules are not made a part of the statute. They are framed for guidance of the Small Town Committees in the conduct of their business. These and any such rules may at any time be changed by the Government, without notice to or concurrence of the employees who may be affected thereby. Instead of three days, the

Government may at any time provide that a notice of two days or even of a shorter period would be sufficient. The change would equally apply to the persons already in service, they cannot be heard to say that they are not affected by any subsequent change in the business rules. The committee while engaging a servant does not make it a part of its contract with him that in the conduct of its business it shall strictly observe the then obtaining regulations or that he will not be affected by any modification that may subsequently be made. Moreover, the rule itself makes relaxation in the case of emergent meetings. A notice of twenty-four hours is to be enough where the meeting is called emergently. No objection on this score would have been possible, if the notice or the minutes declared the meeting to be an emergent one. Still out of the seven members of the committee who were present at the meeting, none of them complained that he had not received due notice of the meeting. The mere fact that one of the members was not present would not vitiate the proceedings, particularly at the instance of the appellant. It is not even alleged that the appellant was in any way prejudiced. Chint Ram took up the matter in appeal to the Deputy Commissioner and then to the Government, but failed. In my opinion, non-observance or violation of such a rule does not afford him a cause of action or entitle him to the relief claimed.

In the view I have taken, it is not necessary to go into the question whether in the case of contractual relationship between a master and a servant, the Courts can or ought to grant a decree for declaration that the servant had been wrongly dismissed or that he was still in service and entitled to act as such. This is particularly so because no such objection was raised by the defendant

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Committee in its written statement or before either of the Courts below.

In the result, the appeal is dismissed with costs.

CIVIL WRIT

Before Khosla and Falshaw, JJ.

PRITHVI RAJ BALI,—*Petitioner*

v.

THE STATE OF DELHI AND ANOTHER,—*Respondents*

Civil Writ No. 257-D of 1954.

1956

Dec. 11th

Constitution of India, 1950—Article 311—Temporary Government Servant—Whether entitled to the protection of Article 311—Original appointment in Sind before partition by Superintendent of Police and desertion from that post resulting in dismissal as a result of partition—Fresh appointment as temporary Head Constable in Delhi Police by Deputy Inspector-General of Police after partition—Dismissal by Superintendent of Police—Whether valid.

Held, that temporary Government servants in civil employ are not entitled to the protection afforded by Article 311 of the Constitution. This Article was intended to protect permanent members of the services and not individuals who are recruited temporarily to short term posts, and as long as the service is on a temporary basis it does not matter whether it is for a few weeks or a few years. A temporary Government servant knows that he has no permanent lien on the post to which he has been appointed and can have no grievance if he is removed at short notice and without cause being assigned to him.

Held, that where the petitioner was appointed a police constable in Sind by the Superintendent of Police before partition which post he deserted as a result of partition resulting in his dismissal from service and was temporarily recruited as a Head Constable in Delhi Police by the Deputy