representation that should also be given the consideration. As noticed earlier, the Municipal Committee did not serve any notice whatsoever upon the appellant after he was found guilty by the Enquiry Officer. It must, therefore, be held that the action taken against him was in contravention of Sub-rule (6) of Rule 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, Volume I, Part II. Even if the appellant had been found to be guilty of being absent without leave, the Municipal Committee could have imposed either of the three major punishments on him. In this situation, it is open to him to contend that had he been given the statutory show-cause-notice he might have been able to convince the Municipal Committee that in the facts and circumstances of the case extreme penalty of dismissal should not have been imposed on him. Even, otherwise, in *Jai Shanker* v. *Sate of Rajasthan* (3), which was followed in *Deokinandan Prasad* v. *The State of Bihar and others* (4), it has been laid down that even if a public servant remains absent from duty from this fact alone no inference can be drawn that he ceases to remain a public servant. The misconduct committed by him is governed by Article 311 of the Constitution and the procedure laid down in that Article had to be followed before a penalty was imposed on such a public servant.

9. For the reasons aforementioned, I allow this appeal, set aside the judgments a decrees of the Courts below and decree the suit of the plaintiff-appellant. It is, however, clarified that it shall be open to the Municipal Committee to proceed afresh in the matter from the stage of Sub-rule (6) of Rule 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952. No costs.

H. S. B.

Before S. S. Sandhawalia C.J. and S. S. Kang, J.

STATE OF PUNJAB and others—*Appellants.*

versus

SAROJ DEVI ETC.,—*Respondents.*

L.P.A. No. 324 *of* 1977

September 20, 1980.

Constitution of India 1950—*Article* 226—*Candidates recommended for appointment by departmental selection committee—Such committee not itself the appointing authority—No statutory rules nor*

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(3) A.I.R. 1966 S.C. 492.

(4) A.I.R. 1971 S.C. 1409.

any instructions governing such selection—Persons selected—Whether can claim an indefeasible right of appointment.

Held, that it appears to be plain that the selection or the prepraration of a merit list by a selection committee can at the highest be one link in the chain of the process which may finally culminate in the ultimate appointment of applicants. It is not the appointment itself. Holding that selection should give an indefeasible right would in effect be equating it with actual appointment. Moreover, it is to be highlighted that the creation or the constitution of a selection committee is the Act of the appointing authority itself. In the absence of any statutory provision this by itself would not amount to an abdication of the power of appointment by the appointing authority in favour of its own creature namely the selection committee. It is obvious that a selection committee in essence is in the nature of a recommendatory body. The selection by a committee can therefore at the very highest create an inchoate claim which perfects itself into a right if and when it is approved by an appointing authority. It is the sanction and the approval of the appointing authority alone which can create or vest any legal right.

(Paras 5 and 6).

"Letters Patent appeal under clause X of the letters patent against the judgment of Hon'ble Mr. Justice Harbans Lal passed on 29th July, 1977 in C.W. Petition No. 4317 of 1975.

Mahinderjit Singh Sethi, Additional A. G. with K. S. Bakhshi, Advocate, *for the Appellant.*

Surjit Singh Advocate for Sheila Didi, Advocate, *for the Respondents.*

JUDGMENT

S. S. Sandhawalia, C. J.

(1) Whether a mere selection by a Departmental Committee would vest and indefeasible right of appointment to the post, in the selected individual, is the somewhat meaningful issue which, in essence, arises for determination in this Letters Patent Appeal.

2. In pursuance of an advertisement issued by the Punjab Subordinate Services Selection Board, in the Daily Tribune, way back on March 28, 1968, the three respondent-writ petitioners submitted their applications for the post of J.B.T. Teachers. The precise qualifications prescribed for the post in the advertisement were Matriculation with two years' course in the Junior Basic Training. Admittedly,

the applicants at the material time did not possess the prescribed qualifications and mentioned in their applications that they had, as yet appeared in Part II of the Junior Basic Training Course and were awaiting their result.

3. It is the common case that some inordinate delay intervened betwixt the receipt of applications and the selection that followed. The Punjab Subordinate Services Selection Board, which had originally called for the applications was meanwhile dissolved and apparently a Departmental Selection Committee was entrusted with the duties of selection. This Committee, on February 13, 1970 interviewed the petitioners. It appears that during the passage of these two years, the three writ petitioners had passed the J.B.T. examination only in June, 1969. The Departmental Seletion Committee then prepared the merit list for the district of Ferozepur and the writ-petitioners' names figured at Serial Nos. 497, 459 and 630 thereof. However, on an examination of the writ petitioners' original academic certificates, they were directed to clear an examination in Hindi because the prescribed requirement was that only those who fulfilled the qualification of the Hindi Matric standard would be eligible for appointment. The writ petitioners' stand further was that they were called upon to choose their stations of posting but this assertion was categorically denied in the written statement. Meanwhile the appellant-State came to a policy decision and issued instructions on the 4th of May, 1972 to the effect that only those candidates who fulfilled the requisite qualifications on the 20th of April, 1968 (i.e. on or about the last date for the receipt of the applications) would be considered for appointment and not those who had qualified much later. As a necessary consequence the writ petitioners who had admittedly acquired the prescribed qualifications one year and two months after the prescribed date were not appointed to the posts. Aggrieved thereby they preferred the writ petition which stands allowed on the finding that they were entitled to appointments and a mandamus in the following terms had been issued:—

> "Consequently the petition is allowed with costs and it is directed that the petitioners be given appointments against J.B.T. posts for which they had been selected."

4. Now the forceful and the weighty contention of Mr. Sethi, learned Additional Advocate-General, Punjab, on behalf of the

appellant-State in assailing the judgment under appeal is that a mere selection or inclusion of a person's name in a merit list would not by itself vest any legal right of appointment to a post. It was contended that till the actual issue of an appointment letter, no indefeasible rights accrue. Consequently it was submitted that indeed no mandamus directing the appointment of a person merely selected, as in the present case, can possibly issue.

5. On principle the aforesaid submission commends itself to us. At the very threshold we would make it clear that herein we examine the matter admittedly in the absence of any statutory rules or legally enforceable instructions. It is the common case that the Punjab Subordinate Selection Board which had originally invited the applications for the posts of J.B.T. teachers was dissolved and subsequently the matter was entrusted to a Departmental Selection Committee which obviously was not statutory. It was this committee which interviewed the writ-petitioners and others and had prepared a merit list for the consideration and appointment to the posts by the appointing authority. Now it appears to be plain that the selection or the preparation of a merit list by a selection committee can at the highest be one link in the chain of the process which may finally culminate in the ultimate appointment of the applicants. It is not the appointment itself. Holding that selection should give an indefeasible right would in effect be equating it with actual appointment. That in my view would not be warranted either on principle or authority.

6. Viewing the matter from another angle it must be highlighted that the creation or the constitution of a selection committee is the act of the appointing authority itself. In the absence of any statutory provision this by itself would not amount to an abdication of the power of appointment by the appointing authority in favour of its own creature, namely, the selection committee. Holding so would make the selection committee equal to the appointing authority, if not even above it. It is obivous that a selection committee in essence is in the nature of a recommendatory body. Therefore, I am inclined to the view that the selection by a Committee can at the very highest create an inchoate claim which perfects itself into a right if and when it is approved by the appointing authority. It is the sanction and the approval of the appointing authority alone which can create or vest any legal rights.

7. Now what appears to be manifest on principle is equally well suppotred by authority. In *The State of Haryana* v. *Subhash Chander Marwaha and others* (1), a somewhat identical issue arose, even in the context of the specific statutory provisions of the Punjab Civil Service (Judicial Branch) Rules. For the purposes of filling 15 vacancies in the Judicial Service the Haryana Public Service Commission prepared a merit or select list of 40 candidates. Three of the petitioners, whose names figured in the select list preferred a writ petition which was allowed by the High Court on the finding that as long as there were requisite number of vacancies unfilled and qualified candidates were available those candidates had a legal right to be appointed to the posts. Reversing the said view their Lordships of the Supreme Court observed as follows:—

> "It is not disputed that the mere entry in this list of the name of a candidate does not give him a right to be appointed. It may happen that the Government for financial or other administrative reasons may not fill up any vacancies. In such a case the candidates, even the first in the list, will not have a right to be appointed."

And again.

> "One fails to see how the existence of vacancies gives a legal right to a candidate to be selected for appointment. The examination is for the purpose of showing that a particular candidate is eligible for consideration. The selection for appointment comes later. It is open then to the Government to decide how many appointments shall be made. The mere fact that a candidate's name appears in the list will not entitle him to a mandamus that he be appointed.
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> There is no constraint that the Government shall make an appointment of a Subordinate Judge either because there are vacancies or because a list of candidates has been prepared and is in existence."

(1) A.I.R. 1973 S.C. 2216.

8. It would be manifest that the aforesaid observations were made even in the context of specific statutory rules and to my mind they would apply with even greater force in a case where there is a total absence of any binding provision.

9. Again by way of analogy reference may be made to *The State of Mysore and another* v. *Syed Mahmood and others* (2). Therein also the High Court had issued a mandamus directing the State Government to promote the writ petitioners. On appeal their Lordships set aside that mandamus with the followingg observations:—

> "The promotions were irregularly made and they were, therefore, entitled to ask the State Government to reconsider their case. In the circumstances, the High Court could issue a writ to the State Government compelling it to perform its duty and to consider whether having regard to their seniority and fitness they should have been promoted on the relevant dates when officers junior to them were promoted. Instead of issuing such a writ, the High Court wrongly issued writs directing the State Government to promote them with retrospective effect."

10. Both on principle and precedent, therefore, I hold that a mere selection would give no indefeasible right to the selected individual to claim appointment to the post in the absence of any order to the same effect by the appointing authority itself.

(11) With respect I take the view that the mandamus issued by the learned Single Judge in the present case is unsustainable. A reference to the brief judgment recorded would indicate that the larger and the significant principle of law herein was not adequately canvassed or highlighted by the learned counsel for the parties before him. The appeal is hereby allowed and the judgment of the learned Single Judge is set aside and the writ petition preferred by the respondents is dismissed. There will, however, be no order as to costs.

H. S. B.

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(2) A.I.R. 1968 S.C. 1113.