

follows that no ejection orders could be passed till these grounds were proved. Admittedly, this has not been done in these cases. No party is entitled to claim an order under Article 226 or 227 of the Constitution as a matter of course. An order under these provisions of the Constitution may be made only to advance justice. It cannot be made on a technical ground which may have the effect to perpetuate a wrong done to the opposite party. It cannot be said that the landlords have suffered any injustice, leaving alone manifest injustice, in these cases because the Financial Commissioner set aside the orders of ejection albeit on incorrect grounds. If I interfere in these cases on the ground that the Financial Commissioner had given wrong reasons for his decision, then I would be contravening the mandatory provisions of section 7 of the 1953 Act and would be ordering eviction without any proof that the provisions of section 7 have been complied with. I, therefore, see no reason for adopting this course. In the exercise of my discretion I refuse to interfere with the orders of the Financial Commissioner setting aside the orders of the lower Courts in the present cases although on grounds different from those given by him.

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Bishan Narain, J.

For these reasons I dismiss all these petitions.
No order as to costs in these petitions.

APPELLATE CIVIL.

Before Chopra, J.

UNION OF INDIA,—Appellant

versus

SHRI DHARAMPAL CHOPRA,—Respondent.

Regular Second Appeal No. 232 of 1956.

Constitution of India Articles 310, 311—Civilian Employees of Military Farm Department—Such persons, whether belong to a Department connected with Defence—

1957

April, 29th

Person refusing to avail of opportunity afforded for enquiry—Whether has a right to demand enquiry once again.

Held, that Article 311 does not include a person who is a member of Defence services and as such they are not entitled to the guarantee provided by Article 311 and in thier case the pleasure of the President is in no way circumscribed.

Held further, that the Military Farm Department is primarily meant to cater to the requirements of the Defence Forces or other military personnel. The Military Farm can safely be regarded as a department 'connected with Defence'. The mere fact that a person is a civillian, not governed by the Indian Army Act, and not holding any military rank, would not be very much material and Article 311 will not apply.

Held also, that where a person does not deem it necessary to make use of the opportunity or refuses to take part in the enquiry, he cannot as of right demand the enquiry to be held over again at the final stage.

Second Appeal from the decree of the Court of Shri Gulat Chand Jain, District Judge, Jullundur, dated the 9th day of December, 1955, reversing that of Shri H. S. Bhandari, Senior Subordinate Judge, Jullundur, dated the 20th June, 1955, and decreeing the plaintiff's suit with costs throughout against the defendant.

S. M. SIKRI, Advocate-General, for Appellant.

H. L. SARIN, for Respondent.

JUDGMENT

Chopra, J.—This is an appeal by the defendant, Union of India, in a suit dismissed by the trial Court but decreed on appeal by the District Judge, Jullundur.

Dharam Pal respondent was posted as Assistant Supervisor, Incharge Dalhousie Branch of Military Farm. On 12th March, 1951, he was served with a charge sheet and required to submit his explanation. The explanation was submitted. By a separate letter (Ex. D-4), dated 1-5-1951, Dharam Pal informed the inquiry officer that he did not wish to avail of the privilege of an oral

enquiry as allowed under the rules. A show-cause notice was then served upon him on 3rd July, 1951. Dharam Pal, in reply to the notice, prayed that an enquiry into the charges be held and also that he may be granted a personal interview. The prayer for an enquiry was refused on the ground that he had refused to avail of the privilege and the matter could not be re-opened. Personal interview was, however, granted to him. Finally, on 11th October, 1951, he was dismissed from service. Dharam Pal brought the present suit for a declaration that the order of his dismissal was illegal, *ultra vires* and not binding upon him. The principal issue framed in the case was decided against the plaintiff and the suit dismissed by the trial Subordinate Judge. On Dharam Pal's appeal, the learned District Judge has held that the plaintiff ought to have been given a second opportunity to show cause against the action proposed to be taken in respect of him, and since that was not done the suit deserves to be decreed. The appeal was consequently accepted and the suit decreed.

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Shri S. M. Sikri, learned counsel for the appellant, in the first place, contends that Article 311 of the Constitution has no application on the present case, because Dharam Pal plaintiff was holding a 'post connected with Defence'. His alternative argument is that even if Article 311 were applicable, the provisions of the Article were fully complied with. Article 310 lays down that except as expressly provided by the Constitution, every person who is a member of a Defence Service.....or holds any post connected with Defence.....holds office during the pleasure of the President. The next following Article provides the safeguards to which the services of the Union or a State are entitled. Article 311, while enumerating the persons to whom the Article is applicable, does not include amongst them a person

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who is a member of a Defence Service. The omission is significant, it means that the Article has no application to members of Defence Services or to persons holding any post connected with Defence. The result being that they are not entitled to the guarantee, provided by Article 311 and in their case the pleasure of the President is in no way circumscribed. The learned District Judge while holding that the Article is not applicable to a member of Defence Services omitted to see that it is equally inapplicable to persons holding posts connected with Defence. The matter is fully covered by a recent decision of this Court in *Dass Mal v. The Union of India* (1). The same view was taken by Sinha, J. in *Subodh Ranjan Ghosh v. Major N.A.O. Challaghan and another* (2). In this latter case the question was whether the protection afforded under Article 311 was available to an employee (Superintendent Ist grade) in the Military Engineering Service. It was found that the officer was not holding any military rank, nor was he governed by the Army Act. Yet, he was held to be a civilian employed in defence service, to whom Article 309 and 310 applied but not Article 311.

Mr. Sarin, learned counsel for the respondent, submits that the objection regarding non-applicability of Article 311 was not specifically raised in the written-statement and therefore it ought not to have been allowed to be raised in appeal before the District Judge and cannot be raised in this second appeal. The provisions of Article 311 were not specifically relied upon as a ground of attack by the plaintiff himself in his plaint. A general statement was made in Para (4) (g) of the plaint that "the provisions of Indian Constitution had not been complied with." The para was denied

(1) A.I.R. 1956 Punjab 42
(2) A.I.R. 1956 Cal. 532

by the defendant and it was stated that the dismissal order was perfectly *intra vires*, legal and in accordance with the relevant rules. Particular reference to Article 311 was made by the plaintiff in his first appeal and it was urged that the order of dismissal was bad because it contravened the provisions of this Article. The appeal was accepted and the suit decreed by the learned District Judge holding that the provisions of Article 311 were not fully complied with. No objection can therefore be taken to the argument that the plaintiff is not entitled to the benefit of the provisions of the Article.

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It is next submitted that Dharam Pal respondent is holding a Civil Post under the Union, which is by no means connected with Defence. Reliance in this connection is placed on Standing Orders, Military Farms Department. Rule 5 of Chapter II of the Standing Orders relates to 'establishment' and says that the personnel, with the exception of British Officers, are civilians. General Conditions of service of Managers and Supervising personnel, are contained in Appendix VI to these Standing Orders. Clause 9 of this Appendix relates to the grades held by the Assistant Supervisors. Clause 12 states that these appointments will be pensionable and subject to the Civil Service Regulations for all purposes, except travelling allowances which will be governed by Passage Regulations, India. The argument is that the appellant being an Assistant Supervisor he should be deemed to be a civilian governed by the Civil Service Regulations. I do not see any force in the contention. The respondent is no doubt a civilian but it does not mean that the post he is holding is not connected with Defence Services. The civilian employments under Military Service also may be connected with Defence. Admittedly the Military

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Farm employees are paid from the Defence Services Estimates and they are governed, in the matter in question, by 'Army Instructions N.o 212/49 regarding Discipline of Civilians paid from Defence Services Estimates'. It was under these rules that proceedings in the present case were started against the respondent and at no stage any objection to their application has been raised on behalf of the respondent. In general, the Military Farm People would be governed by the rules framed by the President under Article 309 of the Constitution called 'The Civilians in Defence Services (Classification, Control and Appeal) Rules, 1952'. It has not been shown when the Standing Orders relied upon by the respondent were issued. They appear to have been printed and published in 1942. It is by no means clear that they are still in force. In any case, they do not militate the argument that the respondent, though he is a civilian, holds a post 'connected with Defence'.

The Military Farm, of which the respondent is an employee, is primarily meant to cater to the requirements of the Defence Forces or other military personnel. In my opinion, the Military Farm can safely be regarded as a department 'connected with Defence'. The mere fact that the respondent is a civilian, not governed by the Indian Army Act and not holding any military rank, would not be very much material. I am therefore of the view that Article 311 has no application to his case.

Mr. Sikri, in the alternative, contends that the respondent was afforded sufficient opportunity to show cause in respect of the action proposed to be taken against him, and therefore, even if Article 311 applies, no infringement of the same was made. The respondent was served with the charge sheet and required to state if he desired an oral enquiry to be gone into. The respondent in reply

unequivocally stated that he did not want the procedure provided by rule 6 to be followed or an oral enquiry to be held. The explanation submitted by him was taken into consideration and it was tentatively decided that his services should be dispensed with. The show-cause notice was thereafter issued and he was called upon to submit his explanation as to why he should not be dismissed. The explanation was submitted and considered. His prayer for personal interview was also granted. The question is whether the respondent was or was not afforded reasonable opportunity to defend himself and to show that the charges brought against him were false. It cannot be denied that this opportunity was once given to him, but he did not avail himself of it. Where a person does not deem it necessary to make use of the opportunity or refuses to take part in the enquiry, he cannot as of right demand the enquiry to be held over again at the final stage. In *Kapur Singh v. Union of India* (1), a D. B. of this Court has held that where a public servant has had ample opportunity of defending himself at the first stage, his request for another similar enquiry at the second stage, could not possibly be entertained and could rightly be rejected.

In the result the appeal is accepted, the judgment and decree of the District Judge are set aside and those of the trial Court restored. In view of the facts and circumstances of the case, I shall leave the parties to bear their own costs throughout.

SUPREME COURT.

Before Shri Sudhi Ranjan Das, C. J. and Syed Jafer Imam,
Sudhanshu Kumar Das, P. Govinda Menon and
A. K. Sarkar, JJ.

UNION OF INDIA,—Appellant.

versus

M/s CHAMAN LAL LOONA AND CO.,—Respondents.

Civil Appeal No. 24 of 1954.

Indian Independence (Rights, Property and Liabilities)
Order 1947, Article 8—Applicability—Article 8(1),

(1) A.I.R. 1956 Punjab 58.

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