

before it or to stay the action where the other party applies in time and otherwise complies with the conditions of section 34 of the Arbitration Act, 1940.

Bhopinder Singh Dhillon, J.—I agree.

N. K. S.

Before M. R. Sharma, J.

UDHE CHAND,—Appellant.

versus

PATTI MUNICIPAL COMMITTEE, AMRITSAR,—Respondent.

Regular Second Appeal No. 1191 of 1970.

September 17, 1980.

Punjab Civil Services (Punishment and Appeal) Rules 1952—Vol. I, Part II—Rule 7(6)—Delinquent official found guilty in an enquiry held against him—Copy of enquiry report not given to such official—Show cause notice regarding proposed punishment also not given—Requirement of rule 7—Whether violated—Dismissal of Government servant—Whether liable to be set aside.

Held, that the language employed in sub-rule 6 of rule 7 of the Punjab Civil Services (Punishment & Appeal) Rules, 1952 Vol. I, Part II is pre-emptory in nature and casts a duty on the authority concerned to serve a notice upon a delinquent public servant after he has been held guilty in an enquiry. This notice has to mention therein the proposed punishment which is sought to be inflicted upon him. The said rule also provides that the public servant concerned should be given sufficient time to rebut the allegations against him and in case he makes a representation that should also be given due consideration. Where no notice whatsoever is served upon the public servant it must be held that the action taken against him is in contravention of the aforesaid rule. The said rule provides three types of major punishments that is, dismissal, removal or reduction in rank. In that situation it is open to the public servant to contend that had he been given the statutory show cause notice he might have been able to convince the employee that in the facts and circumstances of the case the extreme penalty of dismissal should not be imposed. As such, the dismissal of the public servant is liable to be set aside.

(Paras 8 & 9).

Udhe Chand v. Patti Municipal Committee, Amritsar

Regular Second Appeal from the decree of the Court of Shri J. S. Chatha, Additional District Judge, Amritsar, dated the 26th day of February, 1970, affirming with costs that of Shri V. K. Kaushal, Sub-Judge 3rd Class, Patti, dated the 21st December, 1959, dismissing the suit of the plaintiff and leaving the parties to bear their own costs.

G. R. Majithia, Advocate, with Salit Sagar, Advocate, for the Appellants.

Y. P. Gandhi, Advocate, for the Respondent.

JUDGMENT

M. R. Sharma, J. (Oral).

1. The appellant was in the service of the Municipal Committee Patti. It appears that he remained absent from duty and on that basis an enquiry was held against him. After the Enquiry Officer found the allegations proved against him, the Municipal Committee considered this matter in a resolution and ordered that he be dismissed from service. He filed a civil suit challenging the order of dismissal, *inter alia*, on the ground that the same had been passed in violation of the Punjab Civil Services Rules which had been adopted by the Municipal Committee. His suit was dismissed and the appeal filed by him also met with the same fate. He has come up in second appeal before me.

2. There are only two points which call for determination in this case, firstly, whether the Municipal Committee, Patti, had adopted the Punjab Civil Services Rules or not, and, secondly, whether the impugned order had been passed in accordance with the aforementioned Rules or not.

3. On the first point, there is a copy of resolution (Exhibit P-21) dated October 31, 1951, wherein the Municipal Committee considered the adoption of the Punjab Civil Services Rules regarding the conditions of service of its employees and in the corresponding column of the copy, it was mentioned that the "resolution has been adopted." On the basis of this very resolution, the Executive Officer of the Municipal Committee wrote a letter marked 'A' on November 6, 1951, to the Deputy Commissioner, Amritsar, mentioning therein that the Municipal Committee had adopted the Punjab Civil Services Rules.

In the face of this documentary evidence, it must be held that the Municipal Committee did adopt these rules and its employees were governed by them.

4. The learned counsel for the respondent read out before me the observations made by the learned lower appellate Court on this point. That Court over-emphasised the fact that there was no mention in the resolution that rules regarding punishment had been adopted or not and that the copy of the draft rules which were attached to the resolution, had not been produced in the case. I believe, the learned lower appellate Court made an attempt to over-simplify the entire issue. The resolution when read as a whole clearly mentions that rules relating to entry into service and other conditions of service were sought to be adopted. The resolution was in fact passed and subsequent letter of the Executive Officer does mention in categorical terms that the Punjab Civil Services Rules had been adopted by the Municipal Committee. The finding recorded by the learned lower appellate Court on this point emanates from a misreading of the evidence and the same is hereby set aside.

5. It is not disputed that the appellant remained absent from duty without having his leave sanctioned. It has also been admitted that an Enquiry Officer was appointed to go into this charge, who found the appellant guilty. The grievance of the appellant is that after the Enquiry Officer had held him guilty a copy of his report should have been supplied to him and show-cause-notice should have been served upon him, calling upon him to show cause against the punishment proposed. Admittedly, neither the copy of the report of the Enquiry Officer was given to the appellant, nor was the proposed punishment conveyed to him. The Municipal Committee merely considered the report of the Enquiry Officer in its meeting and passed a resolution that the appellant be dismissed from service.

6. Mr. Gandhi, learned counsel for the Municipal Committee, vehemently argued that as laid down in Rules 8.15 and 8.47 of the Punjab Civil Services Rules, Volume I, a public servant cannot claim leave as a matter of right and in case he remains absent from duty without having his leave sanctioned, this act of his constitutes misconduct. The learned counsel then argued that for misconduct the only punishment could be dismissal from service. He also submitted that it was wrong to assume that in each and every case a public servant was entitled to a second notice after a finding of guilty has been returned against him by the Enquiry Officer. In support of

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this contention the learned counsel relied upon the following observations made by their Lordships of the Supreme Court in *Channabasappa Basappa Happali v. The State of Mysore* (1)—

“... It was a departmental enquiry, on facts of which due notice was given to him. He admitted the facts. In fact, his counsel argued before us that he admitted the fact but not his guilt. We do not see any distinction between admission of facts and admission of guilt. When he admitted the facts, he was guilty. The facts speak for themselves. It was a clear case of indiscipline and nothing less. If a Police Officer remains absent without leave and also resorts to fast as a demonstration against the action of the superior officer the indiscipline is fully established. The learned Single Judge in the High Court was right when he laid down that the plea amounted to a plea of guilty on the facts on which the petitioner was charged and we are in full agreement with the observations of the learned Single Judge.”

This was, however, a case of a Police Officer and if I am not mistaken there is a specific rule that normal punishment for a Police Officer in case of indiscipline is dismissal. The ratio of this case cannot be extended to the case of an ordinary public servant.

7. Mr. Gandhi then relied upon *Suresh Koshy George v. University of Kerala and others*, (2), wherein it was observed as under:—

“There seems to be an erroneous impression in certain quarters evidently influenced by the provisions in Article 311 of the Constitution particularly as they stood before the amendment of that Article that every disciplinary proceeding must consist of two inquiries, one before issuing the show cause notice to be followed by another inquiry thereafter. Such is not the requirement of the principles of natural justice. Law may or may not prescribe such a course. Even if a show cause notice is provided by law, from that it does not follow that a copy of the report on the basis of which the show cause notice is issued should

(1) A.I.R. 1972 S.C. 32.

(2) A.I.R. 1969 S.C. 198.

be made available to the person proceeded against or that another inquiry should be held thereafter.”

The ratio of this case is also distinguishable, inasmuch as the Supreme Court was concerned with the case of a student against whom allegations of misconduct had been levelled and the question which came up for determination was whether in the facts and circumstances of that case, the principles of natural justice stood complied with or not.

8. Since the case of the appellant is governed by statutory rules, we have to be guided by the language of the rules in order to see whether statutory opportunity has been afforded to him or not. Sub-rule (6) of Rule 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, Volume I, Part II, reads as under:—

“(6) After the enquiry against a Government servant has been completed, and after the punishing authority has arrived at a provisional conclusion in regard to the penalty to be imposed, the accused officer shall, if the penalty proposed is dismissal, removal or reduction in rank be supplied with a copy of the report of the enquiring authority and be called upon to show cause within reasonable time, not ordinarily exceeding one month, against the particular penalty proposed to be inflicted upon him. Any representation submitted by the accused in this behalf shall be taken into consideration before final orders are passed:

Provided that if the punishing authority disagrees with any part or whole of the findings of the enquiring authority, the point or points of such disagreement, together with a brief statement of the grounds thereof, shall also be supplied to the Government servant.”

The language employed in this Sub-rule is pre-emptory in nature and casts a duty upon the authority concerned to serve a notice upon a delinquent public servant after he had been held guilty in an enquiry. The notice has to mention therein the proposed punishment which is sought to be inflicted upon him. The Sub-rule also lays down that the public servant concerned should be given sufficient time to rebut the allegations against him and in case he makes a

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(S. S. Sandhawalia, C.J.)

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. State 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 and 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

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

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