APPELLATE CIVIL.

... Before Dulat and Capoor, JJ.

KISHORI LAL BATRA, B.A. LL.B.,—*Plaintiff-Appellant.*

versus

THE PUNJAB STATE AND ANOTHER,—*Defendants-Respondents.*

1958

March, 18th

Civil Regular First Appeal No. 115 of 1956.

Punjab Municipal (Executive Officers) Act (II of 1931)—Section 3(4)—Executive Officer for the municipality appointed by the State Government under—Whether a municipal servant or a Government servant—Test to determine.

Punjab Municipal Act (III of 1911), before amendment by Act V of 1951—Sections 12, 14(e), 17—Seat of an elected municipal commissioner declared vacant under section 14(e)—Vacancy, whether to be filled by mode of election only—Section 240(n)—Rules made under—Whether apply to Executive Officers appointed under section 3 of Act II of 1931—Master and servant—Hired servant, whether can be dismissed without notice or without affording opportunity to show cause against his proposed dismissal.

Held, that a person who is appointed as an Executive Officer of a municipality under section 3(4) of the Punjab Municipal (Executive Officers) Act, 1931, by the State Government is a servant of the municipality and not of the State Government. The answer to the question whether a particular person is a municipal servant or a Government servant is determined by the functions which he performs. If he performs the functions relating to a Municipal Committee, he is a Municipal Officer, but if he performs the functions relating to Government, he is a Government servant.

Held, that subsection (2) of section 17 of the Punjab Municipal Act clearly provides that once a seat has been vacated in accordance with section 14(e), the State Government may in its discretion fill that seat either by appointment or election and the mode in which the seat had been filled previously would not appear to be material. Section 17 is obviously to be resorted to when the State Government wants to make an arrangement for filling a casual

vacancy in a Municipal Committee without considering it necessary to alter its Constitution either under proviso to section 12 or in pursuance of clauses (c) and (d) of section 14 as it stood before its amendment by Punjab Act No. V of 1951.

Held, that the rules made under clause (n) of section 240(1), provide *inter alia* for the procedure to be observed for the employment of officers and servants of the committee and as to appeal from orders of punishment or removal. However, the procedure for appointment of the Executive Officers is laid down in the Punjab Municipal (Executive Officers) Act, and no rules made under clause (n) of section 240(1) of the Punjab Municipal Act can affect that procedure. Under subsection (7) of section 3 of the Act, if at a meeting of the committee convened to consider the question of the removal or suspension of the Executive Officer not less than five-eighths of the total number of members constituting the committee for the time being vote in favour of this suspension or removal, the State Government shall so suspend or remove him. The provisions made in the rules under clause (n) of section 240 with regard to appeals from orders of suspension or dismissal cannot apply to any action taken under subsection 7 of section 3 of the Punjab Municipal (Executive Officers) Act, 1931.

Held, that where no stipulation exists as to notice, a hired servant can be dismissed only on reasonable notice. It does not, however, follow that a hired servant cannot be dismissed unless opportunity is given to him to show cause. In the absence of a contractual or statutory provision to the contrary, a right vests in the master to terminate the services of his servant at any time without giving him any reasons for the same. The same rule applies to the officers of local authorities who can be removed at any time without notice or hearing. The right could be circumscribed only by a contract or statutory provision to the contrary.

State of Punjab v. *Prem Parkash* (1), *and Ram Piara* v. *Municipal Committee, Hoshiarpur* (2), relied upon; *Balada Lakshminarayana Deo* v. *Imperial Bank of India, Guntur* (3), and *The New Prakash Transport Co., Ltd.* v. *The New Suwarna Transport Co., Ltd.* (4), distinguished.

(1) 1957 P.L.R. 270.
(2) A.I.R. 1955 Punjab 125.
(3) A.I.R. 1939 Mad. 580.
(4) A.I.R. 1957 S.C. 232.

First appeal from the decree of Shri Harnam Singh Chadha, Senior Sub-Judge, Rohtak, dated the 16th day of March, 1956, dismissing the plaintiff's suit with costs

H. L. SIBLA and V. P. PRASHER, for Appellant:

L. D. KAUSHAL, Deputy Advocate-General and K. S CHAWLA, Assistant Advocate-General, F. C. MITTAL and P. C. JAIN, for Respondents.

JUDGMENT

Capoor, J. CAPOOR, J.—This is a plaintiff's appeal from the judgment and decree of the Senior Subordinate Judge, Rohtak, dismissing his suit with costs.

The facts material for the decision of this appeal are that the Punjab Government by its notification, Exhibit P.W. 2/5, dated the 20th of March, 1948, extended the provisions of the Punjab Municipal (Executive Officers) Act, 1931, to the Municipality of Rohtak; which was a Municipality of the second class as constituted under the Punjab Municipal Act, 1911. Under section 3 of the Punjab Municipal (Executive Officers) Act, 1931, hereinafter referred to as the Act, it was, therefore, incumbent on the committee to appoint within three months from the date of the notification a person with the approval of the State Government as Executive Officer for a renewable period of five years. The meeting for the purpose of appointing an Executive Officer had to be especially convened and the resolution of appointment had to be passed by not less than five-eigths of the total number of members constituting the Committee for the time being. The Municipal Committee, Rohtak, made a recommendation for the appointment of L. Sant Lal as Executive Officer of the Committee (vide Exhibit D. 11) but that recommendation was not accepted by Government as the resolution had not been passed with a

requisite five-eighths majority.—*vide Punjab* Government letter, Exhibit D. 12, dated the 10th of September, 1948, by which the Committee was given an extension of one month within which it may select its Executive Officer. At a special meeting of the Municipal Committee, Rohtak, held on the 9th of October, 1948, it passed a resolution, Exhibit D. 13 by the requisite five-eighths majority oppointing the plaintiff as its Executive Officer for a period of five years. Consequently by its letter, dated the 25th/27th of November, 1948, Exhibit D. 22, the Punjab Government under subsection (4) of section 3 of the Act appointed the plaintiff as Executive Officer for the Rohtak Municipality for a period of five years, and the plaintiff actually took charge of the post on the 1st of December, 1948. On the 5th of September, 1949, a resolution (copy Exhibit P. 3) was passed by this Municipal Committee recommending to Government that the plaintiff be removed from the post of its Executive Officer and in consequence the Punjab Government by its notification, dated the 8th of November, 1949, Exhibit P. 2, purporting to act under subsection (7) of section 3 of the Act directed the plaintiff's removal from that post. The plaintiff thereupon filed the suit giving rise to this appeal impleading the Punjab State as well as the Municipal Committee, Rohtak, as the defendants. The case went to trial on numerous issues and the issues which were found against the plaintiff were as follows:—

> "(5) Is the order dismissing the plaintiff, —*vide* notification No. 10074-C49/70050, dated the 8th of November, 1949, void, illegal, unfair and ineffective for reasons given in the plaint and is the plaintiff still an Executive Officer of the Municipal Committee?

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(6) Is resolution No. 1, dated the 5th of September, 1949, passed by the Municipal Committee in its meeting capricious, arbitrary, malicious, unjustified, ultra vires, void, ineffective and not binding for the reasons given in the plaint and that what is its effect?"

As a result of its findings on these issues the suit was dismissed and in appeal arguments have been confined to these two issues.

The appellant's learned counsel in the first place contended that the plaintiff was serving not under the Punjab Government and that consequently the Municipal Committee could not take any action for his removal. He based this argument on the facts that the Committee had been unable to appoint its Executive Officer within three months of the date of the notification exending the provisions of the Act to it and that the appointment was subsequently made by the State Government itself under subsection (4) of section 3 and, in these circumstances, the plaintiff must be regarded as being employed under the State Government. That inference, however, does not really follow. It is admitted on behalf of the plaintiff that he was being paid from the Municipality's funds and that his Provident Fund also was after the termination of his appointment paid to him by the Municipal Committee. The test in such cases is the nature of functions being performed by the plaintiff. As held by a Division Bench of this Court in *the State of Punjab* v *Prem* Parkash (1), the answer to the question whether a particular person is a municipal servant or a

(1) 1957 P.L.R. 270

Government servant is determined by the functions which he performs. If he performs the functions relating to a Municipal Committee, he is a Municipal Officer; but if he performs the functions relating to Government, he is a Government servant. In that case the plaintiff had been appointed under section 4 of the East Punjab Local Authorities (Restriction of Functions) Act, 1947, by the State Government as a Superintendent of Water Works to discharge the duties of the Municipal Committee in the Water Works Department, and it was held that he could not be said to be the holder of a civil post under the State within the meaning of Article 311 of the Constitution but was a Municipal Officer. There can be no manner of doubt that the plaintiff in the present case was performing functions relating to the Municipal Committee and it would be futile to maintain that he was an officer serving under the State Government.

The next ground of attack was that the Municipal Committee which recommended the plaintiff's removal to the State Government was not properly constituted. On account of the partition of the country, Muslim members of Municipal Committees in the Punjab had like other Muslims migrated to Pakistan and in order to ensure proper functioning of the Municipal Committees the Government had to make some arrangement for filling up their seats. The device adopted was that the seats of those muslim members, who had migrated, were declared vacant under section 14(e) of the Punjab Municipal Act and these seats were then filled up under section 24 of that Act. By notification, dated the 29th of May, 1948, Exhibit P.W. 2/3, the Governor of the then East Punjab in exercise of the powers conferred by section 14(e)

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directed that for reasons of public interest the seats of nine Muslim members of the Municipal Committee of Rohtak shall be vacated from the date of that notification. By notification, dated the 3rd of June, 1948, Exhibit P.W. 2/4, the State Government under the provisions of section 24 appointed nine other persons as members of the Municipal Committee, Rohtak. It is contended on behalf of the plaintiff that this in fact amounted to altering the constitution of the Municipal Committee, which the State Government could not do under the provisions of the Punjab Municipal Act. Section 12 of the Punjab Municipal Act, 1911, as it stood before its amendment by Punjab Act No. V of 1951 was as follows:—

"12. Every such committee shall consist of members appointed by the Provincial Government either by name or by office, or of members elected from among the inhabitants in accordance with rules made under this Act, or partly of the one and partly of the other as the Provincial Government may, by notification, direct:

Provided that, unless the Provincial Government shall otherwise direct, the appointed members shall not exceed one-fourth of the whole committee."

It was argued that in consequence of the above two notifications the proportion of appointed members increased beyond one-fourth of the whole Committee, though the State Government had not issued any direction under the proviso to section 12. It was conceded that acting under clause (e) of section 14 of the Punjab Municipal Act, the Government could declare that the seat of any

specified member, whether elected or appointed shall be vacated on a given date, and in such case, such seat shall be vacated accordingly, notwithstanding anything contained in the Punjab Municipal Act or in the rules made thereunder, but it was pointed out that, while section 14 itself provided that it was to take effect notwithstanding anything in the preceding sections, there was no similar overriding provision in sections 17 and 24 of the Punjab Municipal Act. Under subsection (2) of section 17, when a member's seat has been vacated under the provisions of section 14(e), the State Government may, if it shall think fit, fill his place, either by appointment or by election. It was maintained that since there was no overriding clause in section 17, this provision must be read subject to the constitution of the Committee as laid down under section 12 and that a seat vacated under the provisions of section 14(e) which had formerly been filled by election must be filled by election and a seat filled by appointment must be filled by appointment. This interpretation would, however, read into subsection (2) of section 17 something which is not there. That subsection clearly provides that once a seat has been vacated in accordance with section 14(e) the State Government may in its discretion fill that seat either by appointment or election, and the mode in which the seat had been filled previously would not appear to be material. Section 17 is headed "Casual Vacancies on Committee", and is obviously to be resorted to when the State Government wants to make an arrangement for filling a casual vacancy in a Municipal Committee without considering it necessary to alter its constitution either under the proviso to section 12 or in pursuance of clauses (c) and (d) of section 14 as it stood before its amendment by Punjab Act No. V of 1951.

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The next ground of attack to the constitution of the Committee was that while the notification vacating the seats was published in the East Punjab Gazette of the 4th of June, 1948, (page 180 of Gazette), the notification appointing the new members (E. A. 93, marked as Exhibit P.W. 2/4) was dated the 3rd of June, 1948. The date when the previous notification was issued was the 29th of May, 1948, and in the natural course of things sometime would lapse before it could be printed in the Gazette. As would appear from the printing particulars under E.A. No. 93, the later notification was printed on the 29th of June, 1948. The appellant's learned counsel sought to make a distinction on the ground that while directing the vacation of seats under clause (e) of section 14, the Government had to act by notification and under clause (36) of section 2 of the Punjab General Clauses Act (Punjab Act No. 1 of 1898) "notification" shall mean "a notification published under proper authority in the Official Gazette", so that unless publication was made the notification could not be deemed to have taken effect. Clause (36) does not say that the notification shall have effect only from the date when it is published in the Official Gazette. All that it requires is such publication, and according to the routine in Government offices the notification takes effect from the date it is issued which must usually be sometime before it can be actually printed in the Gazette. The appellant's learned counsel cited *Ramnarain Lal and others* v. *Dr. Radharaman Das and others* (1), in support of the proposition that an official appointment must be deemed to be valid only from the date of its actual publication in the Gazette. I am doubtful as to the correctness of this view, but it is not necessary to decide the point in the present case. Section 24 of the Punjab

(1) A.I.R. 1954 Pat. 393.

Municipal Act also requires that every election and appointment of a member of a committee shall be notified, and there is accordingly no distinction in this respect between this section and section 14. In fact section 24 further provides that no member shall enter upon his duties until his election or appointment has been so notified and until he has taken or made an oath or affirmation of his allegiance. It is not alleged that in pursuance of the notification, dated 3rd June, 1948, all these formalities were gone through before the 4th of June, 1948, and hence there is no force in this ground of objection also.

Then it was maintained that the proposal for the removal of the appellant was not duly seconded. The proceedings of the special meeting at which that proposal was passed are given at V.A. No. 11, Exhibit P. 3, according to which the proposal was made by Ch. Gopal Dass, member, and seconded by four other members of the Committee. The appellant's learned counsel, however, referred to the evidence of Gopal Das (D.W. 2) who said that he had made a written requisition for calling that meeting, which requisition contained his proposal, that this requisition was not read by himself but by an official of the Municipal Committee and that it was in accordance with the practice. He further said that the resolution was not seconded by anyone in that meeting. It was pointed out that according to the business by-laws of this Municipal Committee, Exhibit P. 11, every motion or resolution shall be read, and the motion, if seconded, shall be deemed to be before the meeting for discussion (by-law No. 18). This does not, however, mean that if the member making the proposal is actually present in the meeting and someone else reads his proposal on his behalf, and resolution is subsequently passed, that resolution

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becomes invalid. Similarly if those members who had seconded the resolution did not actually say in the meeting that they were seconding it, but in fact voted for the resolution (as would appear from the proceedings, V.A. No. 11) there would be no defect in substance. The resolution is not, therefore, open to any objection on the technical grounds mentioned above. It is not disputed that It was passed by more than five-eighth ratio of the members of the Committee, and according to subsection (7) of section 3 of the Act it had to be acted upon by the State Government.

The appellant's learned counsel then took up the position that if the plaintiff was not a servant of the Government he must be regarded as a municipal servant and that his suspension or dismissal must be subject to the rules framed under clause (n) of subsection (1) of section 240 of the Punjab Municipal Act. These rules lay down the usual procedure that notice as to the action proposed to be taken must be given by the committee as also an opportunity to the person concerned to show cause. In the present case it is admitted that neither any formal notice nor opportunity to show cause was afforded to the plaintiff. On behalf of the defendants, however, it has been maintained that the plaintiff is neither a servant of the Government nor a municipal servant appointed under the provisions of the Punjab Municipal Act, but that he is a creature of the statute, viz., the Punjab Municipal (Executive Officers) Act, under which he had been appointed and that it is not permissible to go outside that statute or the rules framed thereunder for any matters governing his appointment, punishment, suspension or removal. This appears to be the correct legal position. The rules made under clause (n) of section 240(1) provide *inter alia* for the procedure to be observed for

the employment of officers and servants of the committee and as to appeal from orders of punishment or removal. However, the procedure for appointment of the Executive Officers is laid down in the Punjab Municipal (Executive Officers) Act, and no rules made under clause (n) of section 240(1) of the Punjab Municipal Act can affect that procedure. Under subsection (7) of section 3 of the Act, if at a meeting of the committee convened to consider the question of the removal or suspension of the Executive Officer not less than five-eighths of the total number of members constituting the committee for the time being vote in favour of his suspension or removal, the State Government shall so suspend or remove him. Under section 232 of the Punjab Municipal Act, the Commissioner or Deputy Commissioner may, by order in writing, suspend the execution of any resolution or order of a committee. It cannot for a moment be contended that a resolution of the Municipal Committee passed under subsection (7) of section 3 of the Act by a properly constituted meeting could possibly be suspended by a Deputy Commissioner or Commissioner. Nor could the provisions made in the rules under clause (n) of section 240 of the Punjab Municipal Act with regard to appeals from orders of suspension or dismissal possibly apply to any action taken under subsection (7) of section 3 of the Act. The appellant's learned counsel referred in this connection to certain observations made in Civil Writ No. 569 of 1956, decided by this Court on the 27th of August, 1957, to the effect that an Executive Officer is a municipal employee and that statutory rules made under section 240 of the Punjab Municipal Act apply to an Executive Officer. As would appear from the order in that case, it was conceded before the learned Judge that the petitioner, who was an Executive Officer, was a

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municipal employee to whom statutory rules framed under section 240 of the Punjab Municipal Act, applied and hence the order in that case can be of no help in the present case where those matters have been strenuously contested by the defendants.

Lastly it was contended that by omitting to give notice to the appellant of the charges against him or an opportunity to be heard, the Municipal Committee acted contrary to the principles of natural justice, and a cause of action would thereby accrue to the plaintiff. His learned counsel referred to *Balada Lakshminarayana Reo* v. *Imperial Bank of India, Guntur,* (1), in which it was held that servants of a statutory body, such as the Imperial Bank of India, could not be summarily dismissed, even though no stipulation exists as to notice. It was rightly observed in that case that where no stipulation exists as to notice, a hired servant can be dismissed only on reasonable notice. It does not, however, follow that a hired servant cannot be dismissed unless opportunity is given to him to show cause. In *Ram Piara* v. *Municipal Committee, Hoshiarpur,* (2), it was held by a Division Bench of this Court that in the absence of a contractual or statutory provision to the contrary a right vests in the master to terminate the services of his servant at any time without giving him any reasons for the same and that the same rule applies to officers of local authorities who can be removed at any time without notice or hearing. That right could be circumscribed only by a contract or statutory provision to the contrary, and there is none such in the present case. The appellant's learned counsel asserted that their Lordships of the Supreme Court in *The New*

(1) A.I.R 1939 Mad. 580.
(2) A.I.R. 1955 Punjab 125.

Prakash Transport Co., Ltd., v. *The New Suwarna Transport Co. Ltd.* (1), had recognised that the principles of natural justice as discussed on various authorities of the highest Courts of England could be applicable to certain provisions of the Motor Vehicles Act, 1939, with regard to the granting or cancelling of permits, and one of these principles was that if any material was to be used against a party by the Appellate Authority constituted under the Act, that party should have an opportunity of controverting that material. That case, however, is no authority for the proposition that a master is bound to afford opportunity for showing cause to a servant whom he wants to remove, and in fact no direct authority on this point could be cited by the learned counsel for the appellant. On the other hand the case of Ram Piara v. Municipal Committee, Hoshiarpur, (2), of our own High Court is directly against the appellant on this point.

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In the result, upholding the judgment and decree under appeal of the lower Court, I would dismiss the appeal with costs.

Dulat, J.

Dulat, J. I agree.

K. S. K.