

Ram Parkash Sharma v. State of Punjab and another
(S. S. Sandhawalia, C.J.)

accordingly is allowed in the above terms without any order as to costs.

17. It is common ground that other issues might well arise in CWP No. 3307 of 1980 (*Rajinder Parshad etc. v. State of Haryana and others*), and C.W.P. No. 2632 of 1980 (*S. C. Kaura and others v. State of Haryana and others*). These would now go back to the learned Single Judge for decision on merits in the light of the above.

18. Before parting with this judgment, it is apt a notice that this reference to the Full Bench appears to have been necessitated because of some alleged divergence of judicial opinion in *O. P. Bhatia and another v. State of Haryana and others* (1) and *S. S. Deswal and others v. The Chief Secretary to Government, Haryana* (2) and others. However, before us the counsel for the parties were unanimous in stating that on a closer analysis no conflict of judicial opinion is disclosed which may call for resolution. This is otherwise evident on a reference to *S. S. Deswal's case* (supra) which clearly has been decided on its own peculiar facts at the motion stage.

Prem Chand Jain, J.—I agree.

S. C. Mital, J.—I agree.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain & Surinder Singh, JJ.

RAM PARKASH SHARMA —Petitioner.

versus

STATE OF PUNJAB AND ANOTHER —Respondents.

Civil Writ Petition No. 1263 of 1981

March 4, 1983.

Punjab Municipal Act (III of 1911)—Section 38—Municipal employee voluntarily opting for absorption in the State Municipal

(1) (1980) 1 I.L.R. Pb. & Hary. 470.

(2) CW 767/79 decided on 7th May, 1979.

Service—Such employee found unfit for absorption by the screening committee—Screening committee—Whether bound to give a hearing to the employee before finding him unfit—Rules of natural justice—Whether attracted in such a case.

Held, that the scheme of section 38 of the Punjab Municipal Act, 1911 obviously is that it gives every former municipal employee a clear and categorical choice to join the State level municipal service or not. Under the second proviso to sub-section (6), every such person is entitled to give a notice in writing to the State Government that he does not intend to become a member of the new service and on his doing so, his earlier rights in the old service are statutorily protected. Indeed his vested right to continue in the old service subject to the same terms and conditions that were applicable to him immediately before the constitution of the State level municipal service, is herein left altogether untouched. However, if he does not exercise such a right and in essence voluntarily opts for absorption to a superior State level municipal service, then his case is to be duly considered by an authority appointed by the Government. Such consideration is directed to be based on the foundation of the municipal employee's qualifications and his earlier service record. The question of his fitness for absorption or otherwise is, therefore, to be determined by an independent body and on the basis of statutory guidelines. In case he is found fit then he is to be absorbed and in a way promoted to the State level municipal service. Not only that the first proviso to section 38(6) guarantees that his terms and conditions of service shall not be varied to his disadvantage on his becoming a member of the State level municipal service. It is well settled that in such a situation all that the law prescribes is a consideration by the authority of the employee's case and not that he must be personally heard or given an opportunity to buttress his claim for promotion and absorption in a superior service. Under the Punjab Municipal Act, the relevant statutory provisions do not indicate any intent on the part of the Legislature to afford any opportunity of hearing in this context. sub-section (6) of section 38 of the Act does not appear open to a construction which would necessarily attract the principles of natural justice. On the other hand, sub-section (6-A) of section 38 of the Act by its terminology tends to negative any such intent. The Legislature seems to have advisedly used the language that in case of the municipal employee not being found fit, his post would be deemed to have been abolished. It is well settled that in the case of abolition of the post there is no right of hearing or opportunity to show cause to be given to its incumbent. The intent thus seems to be to negative and exclude the principles of natural justice, if at all, they were to be attracted. Therefore, it is held that the principles of natural justice are not attracted in the case of a municipal employee opting for absorption in the Punjab Municipal Services under section 38 of the Act.

(Paras 11, 12 and 14).

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Case referred by a Division Bench consisting of Hon'ble Mr. Justice Prem Chand Jain and Hon'ble Mr. Justice Surinder Singh,—vide order dated 8th September, 1981 to a larger Bench for decision of important question of law involved in the case. The full Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, the Hon'ble Mr. Justice Prem Chand Jain and the Hon'ble Mr. Justice Surinder Singh, finally decided the case on 4th March, 1983.

PETITION under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court be pleased to send for the records of the case and after the perusal of the same:—

- (i) issue a writ of Certiorari quashing the impugned order Annexure P. 1;*
- (ii) issue a writ of prohibition restraining the respondent from relieving the petitioner from the post held by him.*
- (iii) stay the operation of the impugned order annexure P. 1 during the pendency of the writ petition;*
- (iv) direct the respondent to treat the petitioner to be continuing in service;*
- (v) issue any writ Order or direction as this Hon'ble Court may deem fit in the facts and circumstances of case;*
- (vi) dispense with the service of notice of motion at this stage;*
- (vii) cost of the petition be awarded to the petitioner;*

M. R. Agnihotri, Advocate with O. P. Goyal and K. K. Sharma, Advocates.

T. S. Doabia, Advocate with J. S. Arora, Advocate, for the State.

Rajiv Kataria, Advocate with Vanita Kataria, Advocate for No. 2.

JUDGMENT

S. S. Sandhawalia, C.J.

1. Whether the principles of natural justice are inflexibly attracted even in the case of a Municipal employee voluntarily opting for absorption in the newly created State level Municipal

Services under section 38 of the Punjab Municipal Act, 1911 [despite the binding precedent of the Full Bench in (*Pal Singh v. State of Punjab*) (1) holding to the contrary]—is the spinal question which has necessitated this reference in this set of six connected writ petitions. In essence, the issue is whether the ratio in *Pal Singh's case* (supra) still holds the field after the later judgements in *Mohd. Rashid Ahmad etc. v. The State of U.P. and another* (2) and *Mazharul Islam Hashmi v. State of U.P. and another* (3).

2. The relevant factual matrix may be briefly picked from C.W.P. No. 1263 of 1981 (*Ram Parkash Sharma v. State of Punjab*). The petitioner therein joined service in the Municipal Committee of Tarn Taran, District Amritsar as an Octroi Moharrir in 1944 and was later promoted and confirmed in the post of Octroi Inspector. In the year 1975, the State Government constituted the Punjab Municipal Service of some categories including posts of the Inspectors of Octroi under section 38(1) of the Punjab Municipal Act, 1911 (hereinafter called 'the Act'),—vide notification dated December 17, 1975. The State Government also constituted a Screening Committee under sub-section (6) of section 38 of the

on this aspect, learned counsel did not press his challenge and I must consequently conclude that the provisions of sub-sections (6) and (6-A) of Section 38 of the Act are beyond the pale of challenge with regard to their constitutionality.

5. In the aforesaid context, Mr. M. R. Agnihotri, learned counsel for the petitioner was fair enough to take the stand that the only question that now survives is whether the principles of natural justice are inflexibly attracted under section 38(6) even in the case of municipal employees who opt for absorption in the admittedly superior Punjab Municipal Services constituted under Section 38(1) of the Act. Herein, what calls for prominent notice is the fact that this issue was specifically raised before the Full Bench in *Pal Singh's case* (supra) and it was held unreservedly that no question of natural justice arises in this situation. O. Chinnappa Reddy, J. presiding and speaking for the Bench of five-Judges was somewhat categorical in the following terms:—

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3. In the return filed on behalf of the respondent-Municipal Committee, the broad factual position is not disputed. It is, however, highlighted that the service record of the petitioner was so poor that he was found unfit for absorption in the Punjab Municipal Service despite a close examination of the same and his qualifications by the Screening Committee. It was pointed out that the writ petitioner had himself opted to become a member of the Punjab Municipal Service and in view of this, by virtue of sub-sections (6) and (6-A), his post stood abolished simultaneously with the decision of the Screening Committee finding him unfit for absorption. The validity of the relevant sub-section of Section 38 and the rules framed for the purposes of consideration and absorption of municipal employees in the state level service, have been reiterated to be valid. Particular reliance is placed on the second proviso to section 38(6) of the Act giving the right to the municipal employees of not becoming a member of the new service and therefore to continue to be governed by the same terms and conditions of service, as earlier, in case he so decides. As regards the applicability of the rules of natural justice, firm reliance was placed on the Full Bench judgment in *Pal Singh's case* (supra), holding in categorical terms that in this context, no principle of natural justice is involved at all.

4. At the motion stage, itself, a challenge to the ratio of *Pal Singh's case* (supra) was sought to be raised on the basis of *Mazharul Islam Hashmi's case* (supra) as also on *Mohd. Rashid Ahmad etc's case* (supra). Consequently, the case and the connected writ petitions were directed to be heard by a larger Bench and that is how they are now before us.

5. Perhaps at the very threshold, it calls for notice that the validity of the relevant parts of sub-section (6) and sub-section (6-A) was also in a way one of the grounds of challenge in this set of writ petitions. However, even the learned counsel for the petitioner was compelled to concede that in view of the Full Bench judgment in *Pal Singh's case* (supra) as also the subsequent precedents in *Mohd. Rashid Ahmad etc. & Mazharul Islam Hashmi's cases* (supra), this challenge is now wholly untenable. It was conceded before us that some of the analogous provisions of the U.P. Nagar Mahapalika Adhiniyam, 1959, and the U.P. Palika (Centralised) Service Rules, 1966 which were admittedly in somewhat more stringent terms, have been held to be valid and constitutional by their Lordships in the aforesaid cases. Therefore,

on this aspect, learned counsel did not press his challenge and I must consequently conclude that the provisions of sub-sections (6) and (6-A) of Section 38 of the Act are beyond the pale of challenge with regard to their constitutionality.

5. In the aforesaid context, Mr. M. R. Agnihotri, learned counsel for the petitioner was fair enough to take the stand that the only question that now survives is whether the principles of natural justice are inflexibly attracted under section 38(6) even in the case of municipal employees who opt for absorption in the admittedly superior Punjab Municipal Services constituted under Section 38(1) of the Act. Herein, what calls for prominent notice is the fact that this issue was specifically raised before the Full Bench in *Pal Singh's case* (supra) and it was held unreservedly that no question of natural justice arises in this situation. O. Chinnappa Reddy, J. presiding and speaking for the Bench of five-Judges was somewhat categorical in the following terms:—

“.....Nor does any question of giving an opportunity to the petitioner arise. No one can claim that he should be heard before the question of his fitness or unfitness for membership of a Service is determined. There is no principal of natural justice involved at all. The fitness or unfitness of a candidate is considered for membership of the new Service and not for membership of the old Service. A person may complain that a principle of natural justice has been violated if his fitness for membership of the old Service of which he is already a member is determined without any opportunity being given to him. That is not the situation here. The petitioner has himself voluntarily abandoned the membership of the old Service. If the authority constituted to determine his fitness for the membership of the newly constituted Service does not give him an opportunity to be heard, he cannot complain that there has been any violation of any principle of natural justice. We are, therefore, unable to hold that Section 38(6) offends Article 14 of the Constitution. The case will now go before a Division Bench for consideration of other questions raised in the writ petition.”

In view of the aforesaid authoritative enunciation by the larger Bench, the logic or rationality thereof is not open to challenge before us except on the limited ground that the final Court has

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later expressly or tacitly overruled that view. The learned counsel for the parties were fair enough to subscribe to this axiomatic position. The sole issue that, therefore, survives is whether the aforesaid ratio of *Pal Singh's case* (supra) is no longer good law in view of the observations in the subsequent decisions in *Mazharul Islam Hashmi* and *Mohd. Rashid Ahmad etc.'s cases* (supra). It is within these narrow confines of the rule of precedent that the matter has now to be considered. Unless we come to the conclusion that the Supreme Court judgments have expressly or by necessary implication overruled the enunciation of law in *Pal Singh's case* (supra), we would remain respectfully bound by the observations therein.

6. Now there is no manner of doubt that in *Mohd. Rashid Ahmad etc.*, and *Mazharul Islam Hashmi's cases* (supra), their Lordships took the view that under the relevant provisions of the Uttar Pradesh statutes, the principles of natural justice were attracted. The core question, therefore, is whether the corresponding provisions of sub-sections (6) and (6-A) of Section 38 of the Act are so *pari materia therewith* so as to make the legal position identical in both the cases and as a necessary consequence attract the ratio of the Supreme Court cases on all fours in the present case as well. It is, therefore, apt and indeed necessary to juxtapose the relevant corresponding provisions against each other:—

Punjab Municipal Act, 1911.

38. (1) Notwithstanding anything contained in this Act, the State Government, may, by notification, constitute in the prescribed manner, all or any of the following Municipal Services, namely:—

(i) Punjab Service of Municipal Executive Officers:

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|-------|---|---|---|---|---|
| (ii) | * | | * | | * |
| (iii) | * | | * | | * |
| (iv) | | * | | * | * |
| (v) | * | | * | | * |
| (vi) | * | | * | | * |

U.P. Nagar Mahapalika Adhiniyam, 1959.

112-A. *Centralization of Services:—*

(1) Notwithstanding anything contained in Sections 106 to 110 the State Government may at any time by rules provide for the creation of one or more services of such officers and servants as the State Government may deem fit, common to the the Mahapalikas or to the Mahapalikas and prescribe the method of recruitment and conditions of service or persons appointed to any such service.

(2) When any such service is created, officers and servants serving on the posts included in the service may, if found suitable be absorbed in the prescribed manner in the service.

(2) * * *
 (3) * * *
 (4) * * *
 (5) * * *

(6) Every person, who immediately before issue of a notification under sub-section (i), is serving in a committee on a post in relation to which a Municipal Service is constituted shall, on the issue of such notification become a member of the corresponding Municipal Service, if he is found fit by an authority appointed by the Government in this behalf for becoming such a member on the basis of his qualifications and service record;

577. *Continuation of appointments, taxes, budget estimate, assessments, etc.—Save as expressly provided by the provisions of this Chapter or by a notification issued under Section 579—*

(a) * * *
 (b) * * *
 (c) * * *
 (d) * * *

(e) all officers and servants in the employ of the said Municipality, Improvement Trust, Development Board or local authority immediately before the appointed day shall, notwithstanding anything in Sections 106 and 107, be officers and servants employed by the Mahapalika in a temporary capacity under this Act and for so long as they are not appointed to posts created under this Act they shall draw the same salaries and allowances and shall be subject to the same conditions of service to which they were entitled or were subject on the said day.

(f) the following procedure shall be adopted in appointing the officers and servants referred to

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in CI (e) to the posts created by the Mahapalika under Section 106—

Provided that his terms and conditions of service insofar as they relate to remuneration, gratuity and provident fund shall not be varied to his disadvantage on his becoming a member of the Municipal Service :

Provided further that any such person may, by notice in writing given to the State Government, within a period of thirty days of constitution of the Municipal Service, intimate his intention of not becoming a member of such Service and where such an intimation is given that person will not become a member of the corresponding Municipal Service and will continue to be governed by the same terms and conditions of service as were applicable to him immediately before the constitution of the Municipal Service.

(6-A) In the case of person who is not found fit under subsection (6) for becoming a member of the corresponding Municipal Service, the post on which he is serving shall be deemed to have been abolished on the commencement of the Punjab Municipal (Second Amendment) Act, 1976, if the decision that he is not so fit was taken at any time before such commencement

(1) * * * *

(2) * * * *

(3) * * * *

(4) If any temporary officer or servant as aforesaid is found not to be suitable for any post created by the Mahapalika or he declines to accept the post to which he is appointed on the ground that its pay or time scale of the pay is less than his present pay or time scale, his service shall be terminated after giving him necessary notice as required under the terms of his service but each such officer or servant whose services have been terminated in this manner shall be entitled to such leave, pension or gratuity as he would have been entitled to take or receive on termination of his service if this Act has not been passed;

* * *

Rule 6 of U.P. Palika (Centralization Service Rules, 1966.

(1) — — —

(2) The absorption or determination of the services of officers and servants of the Palika holding or performing the duties and functions of, the posts referred to in Rule 3

and in the case of others as and when such a decision taken:

Provided that the Government may appoint such a person, with his consent, on a post in any other Municipal Service to which he may be found suitable."

immediately before commencement of these rules shall be governed by the following provisions:—

(i) **Permanent officers and servants** of the Palika as well as officers and servants referred to in clause (e) of Section 577 of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959, shall, unless they opt otherwise, stand absorbed provisionally subject to such orders as Government may in each case pass.

(ii) **Other temporary officers and servants** shall, unless they opt otherwise, stand absorbed provisionally subject to such orders as Government may in each case.

(iii) **Such Officers and servants** as are provisionally absorbed under clauses (i) and (ii) may by subsequent orders of the State Government to be passed before the 31st day of August, 1967, be finally absorbed, if found suitable.

(iv) If in any such case no orders to the contrary are passed by Government before the date mentioned in clause (iii) the officer or servant shall be deemed to be finally absorbed.

(v) **The services of officers and servants** referred to in the preceding clauses who opt against absorption as well as of

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those who are found to be unsuitable for absorption shall stand determined, and they shall, without prejudice to their claim to any leave, pension, provident fund or gratuity as they would be entitled to take or receive on their retirement or termination of service, as the case may be, if these rules had not been made, be paid the following compensation.

(a) * *

(b) * *

Apart from the aforesaid statutory provisions in the U.P. case the Government had, itself issued three distinct circulars dated January 11, 1967, January 31, 1967 and February 23, 1967, on the import of which the case primarily turned in *Mohd. Rashid Ahmad etc.'s* (supra). The first circular embodied the Government's policy in these terms:—

The Government desire that all officers and servants whose services are proposed to be determined on grounds of unsuitability may be given an opportunity of personal interview by the Committee.”

By the second circular, the Government divided the officers and servants who were to be considered for absorption into two categories and those drawing a salary less than Rs. 500/- were to be interviewed by the Divisional Committee while in the case of those drawing Rs. 500/- and above, selection was to be made by the State Selection Committee. Thereafter in the third circular, it was again directed as under:—

“.....the committee should interview the official concerned to judge his suitability or otherwise for absorption in the centralised services.

.....When it is proposed to declare an official to be unsuitable for absorption on the basis of adverse

entries, the Divisional Committee should afford an opportunity to the official concerned to appear before it and clear up his position."

Now it was on the applicability and interpretation of these three instructions that the result turned in favour of one of the appellants Mohd. Rashid Ahmad and against the other appellant Ashfaq Hussain. The stand sought to be taken up on behalf of the respondent State of U.P. therein was that whilst an opportunity of personal hearing was required under the circulars before the Divisional Committee, no such duty was cast on the State Government. It was this stand of the State Government which was rejected by the Court and it was held that the State Government was not absorbed of the duty to hear the officers and servants of the erstwhile Municipal Board and other Local authorities drawing Rs. 500/- and above. The clear cut finding given was that the circulars and the consequent right of personal hearing granted by them was applicable to all municipal employees irrespective of their salary. On this legal finding it was held that Ashfaq Hussain appellant had been granted a personal hearing by the Divisional Committee in accordance with the circulars and his appeal was dismissed. However, as it was the admitted position that Mohd. Rashid Ahmad appellant had not been given any opportunity of personal hearing as spelt out by the circulars, the termination of his services, therefore, suffered from a serious legal infirmity. Added to this infirmity, it was further found that the procedure laid down in the U. P. Palika Centralised Service Rules, 1966 had not been followed in that appellants' case and also the method of recruitment provided by rule 20 thereof had not been subscribed to. For these reasons Mohd. Rashid Ahmad appellant's appeal was allowed.

8. From the aforesaid closer analysis of *Mohd. Rashid Ahmad etc.'s case* (supra), it seems to be more than manifest that the same would be wholly distinguishable. In the present case admittedly there is no Government circular or instruction whatsoever providing for any right of personal hearing or an opportunity to show cause. Indeed everything points to the contrary. No question, therefore, of the applicability of any such circular or interpretation, arises herein. Nor is there any other infraction of the statutory rules as was found in the Supreme Court case. On this primary ground, therefore, it has to be held that the ratio of *Mohd. Rashid Ahmad etc.'s case* (supra) is not in any way attracted at all.

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9. Again keeping the issue of the Government circulars altogether apart, a plain look at the afore-quoted juxtaposed corresponding provisions would leave no manner of doubt that these are far from being in *pari materia* and in fact the language appears to be widely dissimilar. A closer analysis which follows hereafter would disclose even a greater disparity of import and legal effect flowing from the provisions in the U.P. case and the present case. Consequently, it cannot be possibly said that the ratio of *Mohd. Rashid Ahmad etc's case* (supra), resting as it clearly is on the specific U.P. statutory provisions with their intricacies and innuendoes would *ipso facto* be attracted to the entirely different provisions of sub-sections (6) and (6-A) of Section 38 of the Punjab Municipal Act. It is axiomatic that the considered and binding decision of the Full Bench in *Pal Singh's case* (supra), construing the latter provisions, cannot be given the go-by unless the statutory provisions in *Mohd. Rashid Ahmad etc's case* (supra) are identical in terms and their legal effect.

10. The most significant matter which calls for highlighting under the U.P. provisions is the fact that after the creation of the Municipal Corporations (Mahapalikas), for the cities of Kanpur, Agra, Varanasi, and Allahabad, the corresponding posts in the earlier municipal services, were intended to be finally absorbed in the centralised service along with their incumbents and in case of the latter being found unsuitable, their services were to be determined. In the said Municipal Corporations, there were not to be two services, namely the centralised service and the old one, but one service in place of the earlier so far as the centralised posts were concerned. By virtue of section 577(e) of the U.P. Nagar Mahapalika Adhiniyam, 1959, all officers and servants in the employ of the Municipality, Improvement Trust, Development Board or local authority before the appointed day, were to become officers and servants employed by the Mahapalika in a temporary capacity. Similarly, by virtue of clause (f)(4) of the said section, any officer who was found not to be suitable for any post created by the Mahapalika or to decline the post to which he was appointed, his services were to be terminated after giving him the necessary notice subject to his right to leave, pension and gratuity as he was entitled. Again the material provisions of rule 6(2)(v) of the U.P. Palika Centralised Service Rules, 1966, in turn provide that the services of officers and servants who either opted against absorption or were found to be unsuitable for absorption, shall stand determined subject to any ancillary right, if any, to leave pension, provident

fund or gratuity etc. In essence the combined result of the statutory provisions was that the officers and servants of the previous old municipal service were first automatically absorbed provisionally in the centralised service of the Mahapalika and thereafter if they were considered to be unfit for their posts, their services were compulsorily determined. In substance, as regards persons who were not absorbed and those who opted against absorption, it amounted to a virtual removal from their earlier service of whatever length and nature and having the effect of throwing such employees on the road. Such employee had no choice or volition in the matter. As pointed out earlier, under rule 6(2)(v) of the U.P. Palika Centralised Service Rules, the services of all those who opted against absorption as well as of those who were found to be unsuitable for absorption were statutorily declared to be determined forthwith. It was in the context of such a preemptory provision as also the Government circulars issued thereunder that the attractability of the rules of natural justice had to be considered in *Mohd. Rashid Ahmad etc.'s case* (supra).

11. However, the position under the relevant provisions of the Punjab Municipal Act seems to be entirely different, if not diametrically opposite. The scheme of section 38 of the Act obviously is that it gives every former municipal employee a clear and categorical choice to join the State level municipal service or not. Under the second proviso to sub-section (6), every such person is entitled to give a notice in writing to the State Government that he does not intend to become a member of the new service and on his doing so, his earlier rights in the old service are statutorily protected. Indeed his vested right to continue in the old service subject to the same terms and conditions that were applicable to him immediately before the constitution of the State level municipal service, is herein left altogether untouched. However, if he does not exercise such a right and in essence voluntarily opts for absorption to a superior State level municipal service, then his case is to be duly considered by an authority appointed by the Government. Such consideration is directed to be based on the basis of the municipal employees' qualifications and his earlier service record. The question of his fitness for absorption or otherwise, is therefore, to be determined by an independent body and on the basis of statutory guidelines. In case he is found fit then he is to be absorbed and in a way promoted to the State level municipal service. Not only that the first proviso to section 38(6) guarantees that his terms and conditions of service shall not be varied to his disadvantage on his becoming a member of the State level municipal service. It is well

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settled that in such a situation all that the law prescribes is a consideration by the authority of the employee's case and not that he must be personally heard or given an opportunity to buttress his claim for promotion and absorption in a superior service. This aspect was succinctly highlighted by the Full Bench in *Pal Singh's case* (supra) in these terms:—

“.....At the very outset, the employee is given the right to continue to hold the post held by him subject to the same conditions of service as before. He will be considered for membership of the new Service only if he does not intimate his intention of not becoming a member of such service. Thus if he does not intimate his desire to continue in the existing service to which he was a member he takes the chance of not being selected for membership of the new Service if he is found unfit. The membership of the new Service is to be determined on the basis of qualifications and service record by an authority appointed by the Government in that behalf. The guidelines are there. The question of fitness is determined by an independent body. There is nothing arbitrary about it. Nor does any question of giving an opportunity to the petitioner arise. No one can claim that he should be heard before the question of his fitness or unfitness for membership of a Service is determined.”

It seems manifest that in view of the altogether different nature of the provisions of section 38 of the Punjab Municipal Act and their legal import, the aforesaid observations of the Full Bench remain unimpeachable and unassailable.

12. Lastly under the Punjab Municipal Act the relevant statutory provisions do not indicate any intent on the part of the Legislature to afford any opportunity of hearing in this context. Sub-section (6) of Section 38 of the Punjab Municipal Act does not appear open to a construction which would necessarily attract the principles of natural justice. On the other hand, sub-section (6-A) of Section 38 of the Punjab Municipal Act indeed, by its terminology, tends to negative any such intent. The Legislature seems to have advisedly used the language that in case of the municipal employee not being found fit, his post would be deemed to have been abolished. It is well settled by a long catena of judgments that in

the case of abolition of post there is no right of hearing or opportunity to show cause notice to be given to its incumbent. It is obviously in this light that sub-section (6-A) of the Punjab Municipal Act does not choose to say that the services of a municipal employee not found fit would be determined or terminated, but in express terms says that the same should be deemed to have been abolished. The intent thus seems to be a negative and exclude the principles of natural justice, if at all, they were to be attracted.

13. In passing, it deserves mention that Reddy, J. who presided and rendered the judgment of the Full Bench in Pal Singh's case (supra) was himself later a party to the judgment of the Supreme Court in *Mazharul Islam Hashmi's case* (supra). Though there is no reference in the latter judgment, yet any intent to expressly or tacitly override the succinctly and categorical view, which he had expressed earlier in *Pal Singh case* (supra), is not to be easily presumed.

In the light of the foregoing discussion, the answer to the question posed at the very outset is rendered in the negative and it is held that the principles of natural justice are not attracted in the case of a municipal employee opting for absorption in the Punjab Municipal Services, under Section 38 of the Act. It is further held that the rule in Pal Singh's case (supra), still holds the field and it is no way eroded or affected by the later judgments in *Mohd. Rashid Ahmad etc.'s case* (supra) and in *Mazharul Islam Hashmi's case* (supra) resting as they are on the specific contents of the statutory provisions applicable in Uttar Pradesh.

15. As was noticed earlier, the only issue that survives in this set of cases, namely, whether the principles of natural justice were attracted, has thus to be decided against the petitioners. All the writ petitions are accordingly dismissed without any order as to costs.

Prem Chand Jain, J.—I agree.

Surinder Singh, J.—I agree.

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N.K.S.