

(1970) 08 P&H CK 0042
In the Punjab And Haryana At Chandigarh
Case No : C.W.N. 2981 of 1965

Nathu Ram Mehta

APPELLANT

Vs

Municipal Committee, Jagadhri and others

RESPONDENT

Date of Decision : 27-08-1970

Acts Referred:

Punjab Municipal Act, 1911 — Section 240

Citation : (1970) 08 P&H CK 0042

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : A.N. Mital, for the Appellant; N.K. Sodhi, for Respondent Nos. 1 and 2 and Mr. M.S. Jain, for Respondent No. 3., for the Respondent

Final Decision : Dismissed

Judgement

B.R. Tuli, J.—The petitioner joined the service of the Municipal Committee, Jagadhri, as an Octroi Moharrir on August 6, 1959. He was served with a charge-sheet on June 12, 1963 to which he submitted his explanation on June 15, 1963. There was a typographical error in the charge-sheet which was corrected by Memo, dated June 15, 1963, by the Executive Officer of the Municipal Committee. To the amended charge-sheet the petitioner sent his reply on June 20, 1961. An enquiry was held into the charges by the Executive Officer of the Municipal Committee in November, 1963. The Inquiry Officer submitted his report on November 25, 1963, giving his findings in respect of all the charges. On the basis of the enquiry report, the Municipal Committee, Jagadhri, passed a resolution on November 30, 1963, dismissing the petitioner from its service with effect from that date. The order of the Municipal Committee was conveyed to the petitioner by the Executive Officer on December 2, 1965, in the following terms;

The Municipal Committee, Jagadhri, vide its Resolution No. 10 dated 30.11.1963, has dismissed Shri Nathu Ram, Moharrir Octroi, from its service with effect from 30. It, 1963.

Against that order of the petitioner filed an appeal-before the Deputy Commissioner, Ambala, under Rule 4 contained in Part V (relating to the dismissal of municipal employees) of the Punjab Municipal (General) Rules framed u/s 240 of the Punjab Municipal Act, 1911 (hereinafter referred to as the Act) which was dismissed on August 16, 1965. The petitioner then filed the present petition in this Court challenging his dismissal from service.

2. Written statements have been filed on behalf of all the Respondents and at the hearing a preliminary objection was taken by the Learned Counsel for Respondents 1 and 2 that a writ of mandamus directing the reinstatement of the petitioner cannot be issued under Article 226 of the Constitution as the Municipal Committee is not a "State" for the purposes of that Article. There is no force in this preliminary objection. It is true the Municipal Committee is not a "State", but the employees of the Municipal Committees are governed by statutory rules framed by the Government u/s 240 of the Act and the bye-laws framed by the Municipal Committees con-learned u/s 31 of the Act. Section 39 (I) of the Act relates to the employment of officers and servants of a Municipal Committee other than the Secretary, and reads as under:

Subject to the provisions of this Act and the rules and bye-laws made there under, a committee may and if so required by the State Government shall, employ other officers and servants and may assign such officers and servants such remuneration as it may think fit, and may suspend, remove, dismiss, or otherwise punish any officer or servant so appointed.

3. According to this section, therefore, a municipal employee can be dismissed by following the procedure laid down in the rules and the bye laws made under the Act. Rule 3 relating to the dismissal of municipal employees framed by the State Government u/s 240 of the Act prescribes the procedure for dismissal, and is in the following terms:

A definite charge shall be framed in writing in respect of each offence alleged against the officer or servant sought to be dismissed. The charge shall be explained to the accused and the evidence in support of it and any evidence that the accused may adduce in his defense shall be recorded in his presence and his defense taken down in writing each of the charges framed shall be discussed and a finding shall be recorded on each charge.

4. The municipal Committee, Jagadhari, framed bye-laws u/s 31 (2) of the Act, which were published vide notification N. 22/LFA dated January 14 1960, in the Punjab Government Gazette dated January 29, 1960. Bye law 88(2) provides that "the service of all the employees of Municipal Committee. Jagadhri shall be governed under Civil Rules, Punjab 1952 " This bye-law makes Punjab Civil Service (Punishment and Appeal) Rules. 1952, applicable for inflicting punishment on a municipal employee. If Rule 3 or bye-law 88, referred to above is not followed, while dismissing a municipal employ his dismissal can be set aside as the Municipal Committee, Jagadhri, is a statutory body created under a

statute. It was held by their Lordships of the Supreme Court in Civil Appeal No. 612 of 1966, *Praga Tools Corporation v. C.A. Inamul and Ors.* C.A. 612 of 1965 decided on February 2, 1969, that-

A mandamus lies to secure the performance of a public or statutory duty in the performance of which the one who applies. for it has a sufficient legal interest. Thus, an application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligation owed by a company towards its workmen or to resolve any private dispute.

Since the Municipal Committee, Jagadhri, is a statutory corporation governed by the provisions of the Act and the Rule framed under that Act and its own bye-laws, it can be directed to perform its statutory duty under the Act, the Rules and the bye-laws qua its employees if it is found that the procedure laid down therein has not been followed. The petition therefore, maintainable and cannot be dismissed on the objection raised by the Learned Counsel, which is repelled.

5. As stated by the parties, a charge sheet was served on the petitioner and an enquiry into the charges was held by the Executive Officer, who submitted his report on November 25, 1963, to the Municipal Committee for proper action. According to Rule 3 of the Punjab Municipal (General) Rules (relating to dismissal of municipal employees) set out above, the Municipal Committee had to frame the charges, hold an enquiry in the presence of the petitioner and then record its finding in respect of each charge. This was admittedly not done because the enquiry was held not by the Municipal Committee but by the Executive Officer. Thus the procedure laid down in Rule 3 *ibid* was not followed. The order of dismissal passed by the Municipal Committee, Jagadhri on November 30, 1963, is, therefore, liable to be set aside on the ground that the procedure prescribed in Rule 3 *ibid* was not followed, in case that rule applied, which is the contention of the Learned Counsel for Respondents 1 and 2. According to the petitioner, the Punjab Civil Services (Punishment and Appeal) Rules, 1952, applied by virtue of bye-law 88 and the enquiry could be held under Rule 7 thereof. An enquiry was so held but the procedure prescribed in Rule 7) of the said Rules was not followed inasmuch as after the receipt of the Inquiry Officer's report the Municipal Committee, Jagadhri, did not issue any notice to the petitioner to show cause against the imposition of proposed penalty, nor was the Inquiry Officer's report sent to him. If any such notice had been given to the petitioner, he would have been at liberty to point out the defects in the conduct of the enquiry and would have also shown cause why the proposed punishment should not be inflicted on him. Thus, whether Rule 3 of part V of the Punjab Municipal (General) Rules applied or Rule 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, applied procedure followed by the Municipal Committee for the dismissal of the petitioner was not in accordance with either of them. In my opinion bye-law 88 will prevail against Rule 3 ID Part V of the Punjab Municipal (General) Rules because that bye-law is more advantageous to the petitioner and

it was absolutely necessary for the Municipal Committee to have issued notice under Rule 7(6) of the Punjab Civil Services" (Punishment and Appeal) Rules to the petitioner. Since that was not done the, order of dismissal is liable to be quashed. With that order falls the order of the Deputy Commissioner passed on August 16, 1965, dismissing the appeal.

6. For the reasons given above, I accept this petition with costs and quash the order of the Municipal Committee dated November 30, 1963, dismissing the petitioner from service as also the order of the Deputy Commissioner dated August 16, 1965, dismissing the appeal of the petitioner. The Municipal Committee shall be at liberty to proceed with the disciplinary proceedings against the petitioner from the stage of issuing show-cause notice to the petitioner under Rule 7 (6) of the Punjab Civil Services (Punishment and Appeal) Rules, 1952. Counsel's fee Rs. 100/-.