

(1958) 08 KAR CK 0007
In the Karnataka High Court
Case No : Writ Petition (B) No. 11 of 1956

R.J. Parvatikar

APPELLANT

Vs

Guledgud City Municipality and Another

RESPONDENT

Date of Decision : 26-08-1958

Acts Referred:

Bombay District Municipal Act, 1901 — Section 173, 174, 46 (e)
Bombay District Municipal Rules — Rule 147, 156, 182

Citation : AIR 1961 Kar 181 : (1960) ILR (Kar) 211

Hon'ble Judges : Iqbal Hussain, J;A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : K. Nanjundiah, for the Appellant; D.M. Chandrasekhar, High Court Govt. Pleader and B.M. Kalagate, for the Respondent

Judgement

Somnath Iyer, J.—The petitioner was employed by the Guledgud City Municipality on March 19, 1939 as a Naka Rakhavaldar on salary of Rs. 13/- per month. In the year 1941, he was transferred as a Sanitary Mukadam in the Sanitary Department of the same Municipality.

2. On December 16, 1943, he was accused of having used service stamps for a communication addressed on behalf of the Municipality to a Municipal Councillor whereas he should have used only the ordinary postage stamps. He having been found guilty of such misuse of those service stamps, was dismissed from, service.

3. By an order made by the Chief Officer on April 29, 1944, he was again appointed as a Sanitary Mukadam in the same Municipality on a pay of Rs. 15/- per mensem, with effect from May 1, 1944. The petitioner was directed to join the post on that date and take charge of it.

4. The petitioner joined that appointment and appears to have made a representation to the Municipality that he should be given his salary for the period between the date on which his services were terminated and the date on which he was re-employed as I have mentioned.

5. On May 23, 1945, the Chief Officer of the Municipality made an order which was as follows:

"The dismissal of applicant made by the G.C. on 16-12-1943 is irregular as the procedure laid down in bye-law No. 156 has not been observed. The mistake, if at all was committed by the applicant does not warrant the dismissal. The appointing authority the body should have a tendency towards correction of subordinates rather than ruining them. Considering the fact that no proper reasons for dismissal are given and also loss of 4 years" service, I order that the break of service for 4 months 15 days should be treated as leave without pay and counted as period of service".

It is thus clear from the order made by the Chief Officer, which, it is not disputed became final in that way, that the punishment which was meted out to the petitioner for the misdemeanour he was alleged to have committed was that he should lose his salary for a period of 4 months and 15 days.

6. It should be mentioned here that the value of the service postage stamps used by the petitioner for the communication to the Municipal Councillor was Rs. 0-1-6.

7. It is undisputed that after his appointment as Sanitary Mukadam from April 1, 1944, the petitioner earned, in recognition of the good work that he did as such Sanitary Mukadam, promotions and increments. On March 1, 1949, he was confirmed as the Head Clerk of that Municipality. Indeed, on July 6, 1951, he was granted an advance increment for the good work that he was turning out as such Head Clerk. His pay by then had gradually increased to Rs. 79/- per mensem.

8. While this was the position, on September 6, 1951, one Doddamani, who was a Municipal Councillor in that Municipality appears to have addressed a communication to the Municipality that the act of misdemeanour alleged to have been committed by the petitioner in the year 1943 which consisted of his using the service stamps instead of ordinary postage stamps, should again be enquired into, in order that suitable action might be taken by the Municipality in that regard.

That communication led to the formation of a sub-committee of the Municipality which enquired into that matter. After that committee completed its enquiry, it made a report to the Municipality which passed a resolution on February 19, 1952 to the effect that the petitioner should be removed from service. On that date, the petitioner was sent the following communication by the Municipality. It reads as follows:

"On 14-2-1952 there was a resolution passed by the General Committee as follows;

"As Mr. R.J. Parvatikar did not give us satisfactory answers to the questions put by the Sub-Committee and as on looking into the former proceedings it is found that the said person is guilty and that he is not fit to remain on the said post. He

should be removed from office after giving him one month's notice from 20-2-1952. Accordingly before 6 p.m. on 19-3-1952 you should give the charge of your office to Mr. V.G. Kulkarni and relieve yourself of your duties. May this be known".

9. The petitioner thereupon approached the Collector under the provisions of Section 173 of the Bombay District Municipal Act. He appears to have thought that an appeal lay to the Collector from the resolution of the Municipality removing him from service as it did. The Collector declined to interfere in the matter whereupon the petitioner approached the Director of Local Authorities, Southern Division, Belgaum. This he did under the provisions of Section 174 of the Act which, so far as I am able to see, had no relevance at all to the matter which he was agitating before the Director.

The Director also declined to interfere in the matter. The petitioner then presented a memorial to the State of Bombay within the area of which the Municipality in this case was functioning. The State of Bombay appears to have remitted the matter to the Director to be dealt with by him. The said Director thereupon, it appears, interested himself in that matter as a result of which he came to the conclusion that the termination of the petitioner's services by the Municipality was unsupportable.

On reaching that conclusion, he addressed four communications to the President of the Municipality between December 29, 1953 and December 2, 1955. Those communications so addressed by the Director have all been produced in this case. In the letter which the Director addressed on December 29, 1953, he wrote as follows:

"After making enquiries in the matter, Government considers that the punishment meted out to Shri Parvathikar is out of all proportion, to the offence you are therefore requested to advise the Municipality to re-instate him in view of his long and otherwise good service. Please place the matter before the General Body early and communicate the action taken by the Municipality in the matter".

In paragraph 4 of the letter which he wrote on August 12, 1954, the Director stated as follows:

""In view of the instructions issued by the Government and conveyed in my letter of even No. dated 29-12-53 and in view of the fact that Shri Gundagadi is not a duly qualified hand for the Head Clerk's post, the reinstatement of Shri Parvathikar should please be considered".

In the third letter which was addressed on October 31, 1955, the Director wrote as follows:

"Due to shortage in postage stamps of the value of Rs. 0-1-6 Shri R.G. Parvathikar was discharged from Municipal service in 1943. In the following year, he was again taken up in the Municipal Service and was promoted to the post of

the Head Clerk of the Municipality. When he was officiating he has been again discharged in 1952, on the same old ground i.e., shortage of Rs. 0-1-6 stamp in 1943. The fact that he had misappropriated service stamp of Rs. 0-1-6 as in 1943 can hardly justify the order of dismissal passed against him in 1953 particularly when he was reinstated after condoning his default. This subject was discussed by me with you and other Councillors at the time of my visit to your Municipality on 12-9-1955 and you were unable to give any sound reasons for his dismissal. I therefore request you to advise the Municipality and to reinstate Shri Parvathikar."

In the last letter which the Director wrote to the President on December 2, 1955, this is what he said:

"Shri R.J. Parvathikar should be reinstated as already advised under this office letter of even No. dated 31-10-1955 and Shri Gundagadagi who is the junior most should be retrenched".

10. None of these four communications addressed by the Director to the President appears to have had any effect on the Municipality. Ultimately, the Director wrote a letter to the petitioner on July 16, 1956 in which he stated as follows:

"Reference to your letters dated 24-1-1955 and 28-7-1955 requesting to direct the Guledgud Municipality to reinstate you in the Municipal Service.

I regret, I cannot interfere in the matter".

It was then that the petitioner presented this writ petition to the High Court at Bombay for certiorari to quash the order made, by the Municipality removing him from service. In that petition the petitioner prayed for a declaration that the order of dismissal was invalid and that the petitioner still continues in the service of the opponent Municipality and is entitled to all his arrears of pay and other emoluments.

11. The High Court of Bombay admitted that writ petition which, under the provisions of the States Reorganization Act, now stands transferred to this Court.

12. Mr. Nanjundiah, learned Advocate for the petitioner contends before us that the order made by the Municipality removing him from service is liable to be quashed for three reasons. His first contention is that the order of removal made by the Municipality in the year 1952 was not within its jurisdiction, and was incompetent. The argument rests on the fact that the charge into which the Municipality enquired in the year 1952 had already been enquired into by the Municipality in the year 1943 as a result of which enquiry, the petitioner had been removed from service.

Mr. Nanjundiah contends that that was the position notwithstanding the fact that the petitioner was reinstated in April 1944, although the Chief Officer by the order which he made in May 1945, refused to allow him to draw the arrears of

salary to which he would have become entitled during the period between the date of his removal and the date of his reappointment. In other words, Mr. Nanjundiah's argument is that the misconduct, whatever it might have been, on the part of the petitioner having already been the subject matter of an enquiry under the provisions of the rules framed under the District Municipal Act and the petitioner having already been subjected to a punishment which was later on, on a reconsideration reduced, it was outside the powers of the Municipality to resurrect the charge again in the year 1952 and remove the petitioner from service on the basis of the same misconduct.

13. The second contention urged by Mr. Nanjundiah is that the proceedings relating to the enquiry such as was conducted by the sub-committee constituted, infringed the rules of natural justice in that the petitioner was not afforded an opportunity to defend himself as required by Rule 149 of the Rules framed u/s 46(e) of the Bombay District Municipal Act.

14. The third and the last contention urged by Mr. Nanjundiah is that the order of removal made by the Municipality is liable to be quashed for the reason that it was made mala fide and was based on collateral considerations.

15. Taking up the first contention urged by Mr. Nanjundiah that the Municipality had no jurisdiction or Competence to make another enquiry into an act of misconduct which had already been the subject matter of the former enquiry in the year 1943, it has to be seen that Mr. Nanjundiah is right when he states that that misconduct had been already the subject matter of a charge in an enquiry on a former occasion.

As I have mentioned, the charge against him was that instead of affixing postage stamps of the denomination of an anna and a half to a letter which he was asked to send to a Municipal Councillor, he affixed service Stamps. That act of misconduct was the subject matter of an enquiry in the year 1943. A charge was framed against him on December 16, 1948, an enquiry was conducted into that matter and a punishment was also imposed on the petitioner.

16. It appears to have been however realised by the Municipality at a later stage, and in my opinion very properly too, that the punishment imposed on the petitioner was manifestly excessive and not at all commensurate with the gravity of the act of misconduct committed by him. That being so on April 29, 1944, the petitioner was again entertained. Whether the order by which he was again entertained by the Municipality and appointed to the same post amounted to a fresh appointment of the petitioner by the Municipality or whether the punishment which had been inflicted on him was revoked to that extent and he continued to be in the service of the Municipality is a question that is not argued before us although in the petition filed by the petitioner it was urged that the petitioner, as a result of the order subsequently made must be deemed to have been re-appointed and not that he continued to be in the service of the Municipality.

17. However that may be, I entertain no doubt at all on the question that the act of delinquency committed by the petitioner was enquired into under the provisions of the rules framed under the Bombay District Municipal Act in regard to which a punishment was also imposed on him. That was how that episode terminated.

18. When that was the position, was it competent for the Municipality to resurrect that charge an enquiry into which had been made and completed, nine years after the completion of the enquiry held on the former occasion and to again subject the petitioner to another enquiry in regard to the same charge? It is not pointed out to us that it was competent for the Municipality to so resurrect the charge under any provision of the District Municipal Act or under any rule framed u/s 46 of that Act. Neither the Act nor the rules framed under it empower the Municipality to adopt that course.

19. Section 46 (e) of the Bombay District Municipal Act provides that every Municipality shall make rules determining the mode and conditions of appointing, punishing or dismissing any officer or servant and delegating to officers designated in the rules the power to appoint, fine, reduce, suspend or dismiss any officer or servant. It was u/s 46(e) of the Act that Rules 144 to 149 were framed by the Municipality in that regard. Rules 144 to 147 have no relevance to the case before us. Rules 148 to 150 read as follows:

148. "No officer or servant shall, in any 12 consecutive months, be (1) fined to a larger amount than two months' pay, or (2) suspended for any one offence for a period longer than three months".

149(1). No officer or servant shall be dismissed without a reasonable opportunity being given him of being heard in his defence. Any written defence tendered shall be recorded and a written order shall be passed thereon.

(2) Every order of dismissal or confirming a dismissal shall be in writing and shall specify the charge or charges brought, the defence, and the reasons for the order.

150. Power to fine, reduce, promote, suspend, dismiss or Otherwise punish any Municipal officer, or servant whose salary exceeds Rs. 15/- is hereby reserved to the Municipality.

20. It is not very clear from the record relating to the proceeding on the former occasion whether the enquiry which was conducted into the charge framed against the petitioner was held in accordance with the provisions of Rule 149 which I have referred to above, that being the material rule for the purposes of this case. The Chief Officer however appears to have thought, when he made his order of May 23, 1945, that the provisions of a particular bye-law had not been adhered to in regard to that enquiry.

He was obviously thinking of Rule 156 when he was referring to bye-law 156. But Rule 156 had no bearing on that enquiry since the Municipality did not discharge the petitioner from service which, it would have done under that rule. It is clear

that the only rule under which the enquiry could have been held by the Municipality on that occasion was Rule 149.

21. Be that as it may, the petitioner was then subjected to an enquiry in regard to the charge on which he was found guilty. The Municipality imposed a punishment on him in regard to that act of misconduct, which he suffered. That punishment consisted of his being deprived of his salary for a period of 4 months and 15 days.

22. When that was the position, the Municipal Councillor who was responsible for She initiation of the proceedings for a second time wanted it to be done, as can be seen from the papers that have been produced before us, only on the ground that he was not in possession of any detailed information as to what happened during the former enquiry and what remarks had been passed against the petitioner. So it was that he desired that a full enquiry should be made about it, and necessary action taken against him.

It is extremely difficult for me to understand how the Municipality could, on a representation of that description made by that Municipal Councillor, start another second enquiry in regard to the same matter which had been fully disposed of during the first enquiry to which I have referred. Mr. Kalagate was not able to point out to us any provision of the Act or the Rules made under it empowering the Municipality to enquire into that matter once again.

23. It is no doubt true as urged by Mr. Kalagate that the Municipality in this case which enquired into the misconduct of the petitioner has to be regarded as some kind of a domestic tribunal whose deliberations or proceedings are not open to judicial review by us unless it is established that that tribunal acted without jurisdiction or violated the principles of natural justice or that its proceedings were vitiated by mala fides or bias.

It is, I think, indisputable that this Court has jurisdiction to quash the proceedings of such domestic tribunals if it transpires that that domestic tribunal had no jurisdiction to conduct the impugned proceedings or that it, in conducting those proceedings, acted in violation of the principles of natural justice or that its action could be regarded as having been actuated by extraneous and collateral considerations or bias.

24. In this case it is very clear to my mind that the proceedings which are brought up before us are liable to be quashed on all the three grounds on which the proceedings of a domestic tribunal can be quashed. As I have already mentioned, in my opinion, the Municipality in conducting another enquiry into a matter which had already become closed, was clearly acting outside its competence and jurisdiction. It had no jurisdiction to subject the petitioner to another penalty for the same act of misconduct for which he had been already once punished.

25. The second argument of Mr. Nanjundiah is as I have already stated, that the

Municipality and the committee which was appointed by it to enquire into this matter acted in violation of the principles of natural justice. This violation according to Mr. Nanjundiah, consists not only of the infraction of the provisions of Rule 149 of the Rules framed u/s 46(e) of the Act but also of the broad principles of natural justice which require that a man should not be punished before he is fully heard. Rule 149 of the rules provides that no officer or servant shall be dismissed without a reasonable opportunity being given to him of being heard in his defence. It also requires that every order of dismissal or an order confirming a dismissal shall be in writing and shall specify the charge or charges brought, the defence, and the reasons for the order.

26. Now in this case it is not disputed that no charges were framed against the petitioner at all when the second enquiry was made. Although Rule 149 does not expressly require the framing of such a charge, that it is necessary to frame one is clear from the provision of Sub-rule (2) of Rule 149 which refers to the "charge or charges brought". The Rule by implication means that before an officer or servant of the Municipality is dismissed, a charge should be brought against him specifying the act of misconduct alleged to have been committed by him. There was thus an irregularity of a very grave character committed by the sub-committee appointed by the Municipality even at the commencement of the enquiry which it held.

27. It is equally clear that no enquiry worth the name was conducted by that sub-committee. It may be that that sub-committee was not bound to conduct a trial in the way in which the ordinary Courts conduct them. But it is equally clear that a tribunal of that type is bound to act according to rules of reason and justice. It cannot act arbitrarily or in a fanciful manner. Its proceedings must be legal and regular.

28. What actually the tribunal did in this case can be gathered from the report which it submitted, to the President of the Municipality. This is how that report reads:

"An enquiry was held about Shri R.J. Parvatikar by the Committee, the written statement given by him on 16-10-51 about the service stamp and the concerned papers were perused and considered. As the written statement submitted by him was not proper, when he was asked orally again in the presence of the Committee, he did not at all give a single proper information concerning the documents, we found him completely guilty. On a careful perusal of all the previous papers, his suspension and removal from service by the former sub-committee and the General Committee is proper. He being a non-Matriculate is unfit to hold the post of Head Clerk. In this way it has been resolved, in the Sub-Committee meeting held on 1-11-51".

It is clear from this report that what the Sub-committee did, was to enquire not only into the use of the service stamps but also into some unspecified "concerned papers" which it perused. It looked into what is described in its

report as "all the previous papers". What those papers contained and what was the matter contained in those papers which was adverse to or prejudicial to the petitioner were not put to him in order that he may meet the information which it got from those papers. Thirdly, the committee took into account the fact that the petitioner was a non-Matriculate and therefore unfit to hold the post of a Head Clerk, a matter about which it was never called upon to hold any enquiry or make a report.

29. Before the committee made its report to the Municipality, it called upon the petitioner to appear before it and give some information. What that information is which the petitioner was called upon by that sub-committee to give, is not gatherable from either its report or from any other part of the record. It is further clear that no charge was framed against him nor was he asked to show cause against any charge. All that was done by the Municipality was to call upon the petitioner to give some information which be pointed out was available in the records and the documents with the Municipality.

30. It was in that way that the sub-committee found the petitioner guilty of some unspecified charge and came to the conclusion that he was unfit to hold the office of a Head clerk for the reason that he had not passed the Matriculation examination. It was that report which the subcommittee made to the Municipality that formed the basis of the resolution which it passed on February 19, 1952. The relevant part of the resolution reads as follows:

"In the quarterly Meeting of the General Committee held on 14-2-1952 Shri gangappa Dodmani proposed that, on a consideration of the report dated 1-11-1951 submitted by the Sub-Committee about Shri R.J. Parvathikar as per the report of the said committee, since Shri R.J. Parvathikar did not give satisfactory answers to the questions put to him, by it, and on perusal of the previous record he was found to be guilty and unfit to hold the said post, a notice of one month from 20-2-1952 should be given to him and he should be removed from service. Shri Naynegali seconded it".

This resolution was passed by a majority of the Councillors that were present at that meeting and led to the order of removal of the petitioner from service which is impugned in this Writ Petition. It is clear from the above proceedings that there was no compliance with the provisions of Rule 149 to which I have already referred and it is, I think, impossible to resist the inference that the petitioner had no reasonable opportunity of defending himself against any charge. It is equally clear that even the broad general principles of natural justice were violated in this case. In my opinion the order of removal made by the Municipality is liable to be quashed on that ground also.

31. The third contention urged by Mr. Nanjundiah is that the order removing the petitioner from the service of the Municipality was made mala fide. Mr. Nanjundiah did not urge in the course of his argument that any particular Municipal Councillor or Councillors had any malice towards the petitioner or bore

any grudge against him. That allegation is not made even in the application presented to the High Court at Bombay. The petitioner in that application wanted an inference to be drawn that the order was actuated by mala fides for the reason that the charge against the petitioner which had been once made the subject matter of an enquiry in the year 1943 was again raked up nine years after the termination of that enquiry and made the subject matter of another incompetent enquiry which the Municipality held.

Mr. Nanjundiah asks us to draw that inference also from the fact that the petitioner who after his re appointment in the year 1944 had earned promotions and increments on account of the excellent work that he did for the Municipality and was drawing a salary of Rs. 79/- per month as against a salary of Rs. 15/- which he was drawing when he was removed from service for the first time, was during the second enquiry "dismissed" as Mr. Nanjundiah says the Municipality did, the punishment according to Mr. Nanjundiah being hopelessly out of proportion to the act of misconduct alleged to have been committed by him. Mr. Nanjundiah has also pointed out to us that the Municipal Councillor who was responsible for the initiation of the proceedings for a second time himself voted against the resolution that the petitioner should be removed from service. He has also pointed out to us that the petitioner has alleged in the affidavit produced by him in this writ petition that the same Municipal Councillor presented a petition to the Municipality on March 18, 1953, requesting that the petitioner should be reinstated and that, that allegation has not been denied by the Municipality.

32. In the circumstances of the case, it is, I think extremely difficult for us to hold that the action taken by the Municipality for removing the petitioner in the way in which it did was not actuated by collateral considerations. The circumstances in which such removal has taken place makes it impossible for any one to think that it was done in good faith. Why anyone should have ever thought of resurrecting a charge which was the subject matter of an enquiry in 1943 and in regard to which proceedings had all come to an end, is a matter which should baffle the understanding of any one except on the hypothesis that someone was interested in putting the petitioner into trouble for some trumpery and by no means very serious act of misconduct on his part.

It may be that the petitioner has not alleged or established that any of those Municipal Councillors who voted for the proposition was actuated by any malice. It is not always necessary that there should be proof of any such malice in order that we should come to a conclusion that an act like the one that if impugned in this case was actuated by mala fides. Each case must depend on its own facts and the conclusion to be drawn from a particular set of facts in each case is necessarily bound to be different.

In the present case, however, it appears to me that the removal of the petitioner was not made in good faith. That that is the correct conclusion to be drawn is clearly demonstrated by the enormity of the punishment which the Municipality imposed on the petitioner for what he did, nine years before it imposed such

punishment That being so, it is, I think, clear that the order removing the petitioner from service should be quashed.

33. But Mr. Kalagate has strenuously contended before us that the order made by the Municipality was not one of dismissal but only one of discharge. He therefore contends that Rule 149 had no application to such discharge. If the petitioner had been simply discharged from service under the provisions of Rule 156 of the rules framed under the Act, Mr. Kalagate's contention would have been unanswerable. But it is. I think, clear that that was not what the Municipality did.

34. Rule 156 under which a Municipality could discharge its servants reads:--

156. "Subject to Section 182 of the Act every Municipal Officer or servant is liable to discharge at one month's notice, but, except with the concurrence of the President and the sanction of the Municipality, no officer or servant whose salary exceeds Rs. 15/- shall be discharged before he has reached the age of 55".

Explanation --"Discharge" does not include "dismissal".

The question therefore is, whether the petitioner was discharged or whether he was dismissed. It is, I think, plain that the petitioner was really dismissed. If the petitioner had been discharged under the provisions of Rule 156 what the Municipality should have done was to simply give him one month's notice and discharge him with the concurrence of the President and the sanction of the Municipality.

It is not even alleged in this case that there was the concurrence of the President although it might perhaps be contended that the resolution amounted to the required sanction of the Municipality. Further to discharge the petitioner from the service of the Municipality it was not necessary for the Municipality to appoint a sub-committee and ask it to make an enquiry and thereupon pass a resolution that he should be removed from service. What the resolution actually states is that the petitioner is removed from service.

It does not state that the petitioner was discharged from service. It is, I think, abundantly clear that the word "removal" was used in the resolution designedly instead of using the word "dismissal" although there can be no doubt that what the Municipality did was to dismiss the petitioner. That it is so is also clear from the fact that in this case the Municipality did not follow the provisions of Rule 182. Rule 182 provides that if a servant of the Municipality is a subscriber to a Municipal contribution, he shall be entitled to it if he has put in a service of five years or more.

That Rule, of course, provides that its provisions do not apply where a person has been dismissed. It is admitted that the petitioner in this case was a subscriber to the Municipal contribution. He had also at that time been in the service of the Municipality for a period of more than five years. That being so, the resolution passed by the Municipality, if it purported to be a resolution

discharging the petitioner under Rule 156, should have contained provision for the payment to the petitioner of the Municipal contribution to which he was entitled. Nothing is stated in the resolution about it.

35. Further, the preamble to the resolution and the recital contained in it to the effect that the petitioner was subjected to an enquiry by a committee during the enquiry made by which he failed to give satisfactory answers to the questions put to him by it and that he was found guilty and unfit to hold the post, all indicate that the Municipality was never thinking of rule 156 or of its power to discharge its servants under that rule.

It is no doubt true that the word "dismissal" is not contained in the resolution of the Municipality or in the order which was sent to the petitioner on February 19, 1955. The mere fact that the Municipality used the word "removal" in that resolution does not mean that it did not dismiss the petitioner from its service. One has got to look into the substance of what it did and if it is found that what the Municipality did was to terminate the services of the petitioner by way of punishment which it intended to inflict upon him, there can, I think, be no doubt that what it did amounted to a dismissal and not to a mere removal as Mr. Kalagate contended it did.

Indeed, the Municipal Act makes no provision for the removal of its servants. Section 46 (e) of the Act Provides for rules being framed determining the mode and conditions of appointing or dismissing any officer or servant. That a servant of the Municipality could be removed in such a manner that his removal would not amount to a discharge or dismissal is, I think, not a matter in regard to which the Act contains any provisions.

36. In N.S. Nagaraja Rao v. State of Mysore AIR 1958 Mys. 23, in discussing the question whether an order terminating the services of an employee amounts to an order of dismissal or not, the learned Chief Justice said thus:

"In my opinion, although all terminations of service may not amount to dismissal, it would not be correct to say that no termination of service would amount to dismissal. A particular termination of service may or may not amount to dismissal. The question as to whether or not a particular termination would amount to dismissal would depend on the facts of that case. This is also the view which has been taken by the Supreme Court in the case of Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI), . The Supreme Court in that case has laid down that every termination does not amount to dismissal and Article 311 does not apply to all cases of termination of service. In other words, Article 311 would apply only to such cases of termination which would amount to dismissal. In order therefore to determine whether the termination of service in the present case amounts to dismissal, I shall have to refer to the material clause in the Standing Orders of the Bangalore Transport Company Ltd".

On page 26 of the Report, the learned Chief Justice added:

"The dismissal took place as a result of a report from some of the other employees of the Government. The question is whether in these circumstances the termination of the service in question amounts to dismissal. In my opinion, it is quite clear that it does. It is something more than a mere termination of service. In the first place, the basis of the termination is that the petitioner had absented himself for a number of days. The termination of service is not brought about by giving a notice in the usual way nor is it brought about by efflux of time of the period of service. The termination took place because of certain acts which the petitioner is said to have committed and for which he is found to be unfit to continue in service".

37. Tested in the light of the principles laid down by his Lordship the Chief Justice in the above case, it is, I think, abundantly clear that the order removing the petitioner from the service of the Municipality was clearly an order of dismissal.

38. For the reasons which I have already stated, that order of dismissal is liable to be quash-ed and it is so ordered. The Municipality is directed to reinstate the petitioner in the office which he held before he was dismissed from service. In my opinion, we should make it clear that the petitioner is entitled to all his arrears of pay and other emoluments.

39. Respondent 1 in this Writ Petition will pay the costs of the Petitioner (Advocate's Fee, Rs. 100/-).

40. Mir Iqbal Hussain J.

I agree.

41. Order accordingly.