(28) It would, therefore, be seen that Wazir Hassan, J., was of the view that if the decree *ex facie* was a consent decree, an appeal against it was barred. The other two Judges did not give any reasons for their decision.

(29) In view of what I have said above, I would hold that the decree passed by the Court below in the instant case, being based on a compromise arrived at with the consent of the parties, is not appealable under section 96(3) of the Code of Civil Procedure. The appeal filed by Mahant Kewal Krishan was, therefore, not competent. The same is, accordingly, dismissed on that ground. The parties are, however, left to bear their own costs.

H. R. SODHI, J.—I agree.

K.S.K.

FULL BENCH

Before Prem Chand Pandit, S. S. Sandhawalia and Bhopinder Singh Dhillon, JJ.

PREM NATH BHALLA,—*Petitioner.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ No. 3395 of 1968

August 18, 1870.

Punjab Municipal (Executive Officer) Act (II of 1931)—Sections 3(1), 3(4) and 3(7)—Executive Officer of a Municipal Committee appointed under sections 3(1) or 3(4) for a fixed period—State Government—Whether can remove such officer before the expiry of the period without complying with rules of natural justice—Such rules—Whether implied in section 7(1).

Held, that sub-section (7), of section 3, of Punjab Municipal (Executive Officer), Act, 1931 governs the appointments made both under sub-section (1) and (4), of section 3 of the Act. An Executive Officer appointed under any of these sub-sections can be removed *at any time* by the Government. His is not a tenure job. When an Executive Officer accepts the appointment, he is supposed to know that even though the Municipal Committee is appointing him for a fixed period, yet the Government is entitled to remove him *at any time* even after 15 days of his appointment. Under these circumstances, he cannot complain that he has a right to the post for the full period. If he knows that his services can be dispensed with *at any time*, then he cannot have any grievance if action is taken against

him under sub-section (7), by the State Government without giving him any show-cause notice. He cannot say as to why and on what ground he is being removed and precisely for that very reason he also cannot say that he should have been given a show-cause notice before he is removed from his office. He has no right to hold the post for the full period fixed at the time of his appointment. Principles of natural justice only come into play when somebody has got a right to a post and even though the terms of his appointment do not say that he will be given a show-cause notice before his services are terminated, still he should be given such a notice before he is asked to go out of office. In that situation, he is entitled to ask the Government as to why his services are being dispensed with. When he accepts the appointment, both he and the Government know that he has a right to hold that post and if it is a tenure job, then both the parties fully realise that he has to remain there for a particular period. But, on the other hand, if in the very beginning he is told that though he is being appointed for a fixed period, yet his services can be terminated at any time during that period by the Government, he cannot then complain as to why his services are being dispensed with earlier. Hence the State Government can under section 3(7) of Act remove an Executive Officer of a Municipal Committee appointed either under sub-section (1), or subsection (4), of section 3 of the Act before the expiry of the period of his appointment without complying with the rules of natural justice by affording him an opportunity to show-cause against such an action and the principles of natural justice are not implied in section 3(7), of the Act. (Paras 1 and 10).

Case referred by a Division Bench consisting of the Hon'ble Mr. Justice Harbans Singh and the Hon'ble Mr. Justice S. S. Sandhawalia on 19th November, 1969 to a larger Bench for decision of two legal questions of law involved in the case. The Full Bench consisting of the Hon'ble Mr. Justice Prem Chand Pandit, the Hon'ble Mr. Justice S. S. Sandhawalia and the Hon'ble Mr. Justice Bhopinder Singh Dhillon decided the questions of law referred to them on 18th August, 1970.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the order of removal of the petitioner dated 24th of October, 1968.

H. L. Sarin with A. L. Bahl and T. S. Doabia, Advocates, for the Petitioner.

J. N. Kaushal, Advocate-General, Haryana with R. N. Mittal, Advocate, for the Respondents.

JUDGMENT OF THE FULL BENCH

Pandit, J.—The following two questions of law have been referred to us for decision :—

(1) Whether the State Government can remove an Executive Officer of a Municipal Committee appointed either under

sub-section (1) or sub-section (4) of section 3 of the Punjab Municipal (Executive Officer) Act, 1931, before the expiry of the period of his apointment without complying with the rules of natural justice by affording him an opportunity to show-cause against such an action ?

(2) If the answer to the first question is in the negative, what are the requirements of the rules of natural justice in such a case ?

(2) The facts giving rise to this reference are these—P. N. Bhalla was appointed as the Executive Officer of the Municipal Committee, Kaithal, by the State of Punjab, under section 3 of the Punjab Municipal (Executive Officer) Act, 1931, hereinafter called the Act. He took charge on 11th August, 1951. It appears that he continued occupying this post and later, on the recommendation of the Municipal Committee, his appointment was approved under section 3(1) of the Act, for a period of five years with effect from 12th August, 1966. On 10th September, 1968, a telephonic message was received by P. N. Bhalla through the Sub-Divisional Officer, Kaithal, that Mr. V. P. Dhir, Deputy Director, Local Bodies (Urban) Harvana, would be reaching Kaithal for making an enquiry into certain complaints made against Bhalla, the President, the Vice-President and some members of the Committee. Mr. Dhir reached at 4.00 p.m. on the same day and he handed over a paper (marked 'X') which contained 25 charges, out of which nine were against Bhalla, 13 regarding the affairs of the Committee and two against the Municipal Commissioners. On 11th September, 1968, Mr. Dhir held, the enquiry into all those charges and the relevant municipal files were also taken from Bhalla. He then left next day at 9.00 a.m. The case of Bhalla is that Mr. Dhir examined some witnesses in his absence and no opportunity was given to cross-examine them. No charge-sheet was served on him, his statement was not recorded and he was not allowed to produce any defence. According to Mr. Dhir, however, he examined some witnesses, but in the presence of Bhalla. He denied that any request by Bhalla to produce evidence was turned down by him. Bhalla, according to him, was given fair and full oportunity to cross-examine the witnesses. He was asked to give his own statement but he said that he wanted some time for preparing the same and his request was acceded to. He, subsequently, sent his detailed explanation on 16th September, 1968, which was duly considered by Mr. Dhir, while submitting his report to the Government. He, however, admitted that no charge-sheet was

given to Bhalla, because there was no procedure for doing so, while conducting such enquiries. On 24th September, 1968 the following order was passed removing Bhalla from the post of the Executive Officer :—

> "The Governor of Haryana is pleased to remove Shri Prem Nath Bhalla, Executive Officer, Municipal Committee, Kaithal in Karnal District, from his post with immediate effect".

(3) Thereafter, on 6th November, 1968, Bhalla filed a writ petition in this Court challenging the order of his removal. This petition was admitted to a Division Bench and it was then placed before Harbans Singh and Sandhawalia, JJ.

(4) The impugned order was challenged on a number of grounds. It was alleged that the order passed was *mala fide* at the instance of Shrimati Om Prabha Jain, Finance Minister of Haryana. But it is needless to go into that matter as that point is not before us.

(5) The main grievance of the petitioner was that he had been removed before the expiry of the period, for which he had been appointed, without any just cause. No charge-sheet was served on him, no regular enquiry was held, the witnesses were not examined in his presence and he was not given an opportunity to cross-examine them. He was not allowed to lead evidence in defence. He was never informed that the enquiry, which was being conducted by Mr. Dhir, was to find out whether the petitioner's services should be dispensed with or not.

(6) The State, on the other hand, contended that under section 3(7) of the Act, the Government had unfettered power either to suspend or remove from office the Executive Officer without assigning any reason and without affording any opportunity to him to show-cause against such an action. It was also said that, at any rate, in the instant case, sufficient opportunity had been given to the petitioner. In support of thier contention, the State relied on a Bench decision of this Court in *Kishori Lal Batra* v. *The Punjab State and another* (1). There in the headnotes (d) and (e) it was said—

> "An Executive Officer appointed under the Punjab Municipal (Executive Officer) Act, 1931, is neither a servant of the Government nor a municipal servant appointed under the

(1) A.I.R. 1958 Pb. 402.

provisions of the Punjab Municipal Act, but he is a creature of the statute, under which he had been appointed and it is not permissible to go outside that statute or the rules framed thereunder for any matters governing his appointment, punishment, suspension or removal. The procedure for appointment of the Executive Officer is laid down in that Act, and no rules made under clause (n) of section 240(1) of the Punjab Municipal Act can affect that procedure, or apply to any action taken under section 3(7) of the Act.

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 the same rule applies to officers of local authorities who can be removed at any time without notice or hearing. That right can be circumscribed only by a contract or statutory provision to the contrary.

Held, that the removal of an Executive Officer appointed under the Punjab Municipal (Executive Officer) Act, 1931, without giving him an opportunity to be heard was not illegal or actionable."

(7) After noticing certain rulings, the learned Judges of the Division Bench were of the opinion that *prima facie* it appeared that K. L. Batra's (1) case, required reconsideration. They further mentioned that previously also in a Letters Patent Appeal against the decision of a writ petition, which had been dismissed in view of K. L. Batra's case (1), this precise matter had been referred to a Full Bench. But as the appeal had become infructuous, the Full Bench did not decide this question. Under these circumstances, the learned Judges referred the above two legal questions to a larger Bench. That is how the matter has come before us.

(8) For the determination of the first question referred to us, it is necessary to reproduce the relevant portion of section 3 of the Act.

"(1) Notwithstanding anything to the contrary contained in sections 26 and 27 of the Municipal Act, the Committee shall, by resolution to be passed by not less than five-eighths of the total number of members constituting the

committee for the time being, at the meeting convened for the purpose of appointing an Executive Officer at which no other business may be transacted, appoint, within three months from the date of the notification issued under sub-section (2) of section 1, a person, with the approval of the State Government, as Executive Officer, for a renewable period of five years on such rate of pay not exceeding one thousand and five hundred rupees inclusive of all allowances, as it may deem fit :

* * * *

(2) If at the meeting convened for the purpose of appointing an Executive Officer a resolution of appointment cannot be passed through failure of any candidate to secure the prescribed five-eighths majority, the chairman shall, on requisition made in writing by not less than one-third of the total number of members constituting the committee for the time being, convene another meeting to be held within fourteen days :

Provided always that such meeting shall be held within three months from the date of the notification issued under sub-section (2) of section 1.

(3) * * * *

(4) If the committee fails to appoint an Executive Officer within three months from the date of notification issued under sub-section (2) of section 1, the State Government may appoint any person as Executive Officer of the Committee for a renewable period not exceeding five years on such rate of monthly pay not exceeding Rs. 1,500 inclusive of all allowances as it may deem fit :

* * * *

(5) * * * * *

(6) * * * * *

(7) The Executive Officer may at any time be suspended or removed from office by the State Government and shall be so suspended or removed if at a meeting of the committee convened to consider the question of his suspension

or removal 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, and if the Executive Officer is suspended the committee shall appoint some person with the approval of the State Government to officiate as Executive Officer.

(8) * * * *

(9) * * * *

Under sub-section (1), the Municipal Committee, shall, with the approval of the State Government, within three months from the date of the notification issued by the State Government extending the provisions of the Act to that Municipality, appoint a person as Executive Officer by a resolution to be passed by it by not less than five-eighths of the total number of members constituting the Committee, for a renewable period of five years. Under sub-section (2), if at the meeting the resolution of appointment cannot be passed, because the person concerned could not secure the required five-eighths majority, the Chairman of the meeting shall convene another meeting for the same purpose to be held within 14 days on a requisition by not less than one-third of the total number of members. The second meeting shall also be held within three months from the date of the notification issued by the State Government extending the Act to that Municipality. According to sub-section (4), if the Committee is unable to appoint an Executive Officer within three months, from the date of the notification issued by the State Government extending the Act to the said Municipality the State Government can appoint any person as Executive Officer of the Committee for a renewable period not exceeding five years. Under sub-section (7), the Executive Officer can *at any time* be suspended or removed from office by the State Government and if at a meeting of the Committee convened to consider the question of his suspension or removal not less than five-eighths of the total number of members constituting the Committee vote in favour of the suspension or removal, then the Executive Officer shall be so suspended or removed.

(9) The answer to question No. 1 will depend upon the interpretation of sub-section (7). The sub-section can be split into two parts. Under the first part, the State Government can *at any time*

suo motu suspend or remove from office an Executive Officer. Under the second part, when the Committee passes a resolution, by not less than five-eights of the total number of members constituting the Committee, to the effect that the Executuive Officer may be suspended or removed, then in that case the State Government has to order accordingly. In the instant case, it is common ground that the Committee had not passed any resolution by the requisite majority for removing the petitioner. The impugned order had been made by the State Government *suo motu*. Therefore, in the present case the first part of sub-section (7) would apply and under the same, the Executive Officer can *at any time* be suspended or removed from office by the State Government. On the language of this part of the section, it is clear that the State Government is authorised to suspend or remove from office the Executive Officer *at any time*. Very wide powers are given to the Government and it has not been stated in the section that before action is taken under it, the State Government has to give show-cause notice or any opportunity to the Executive Officer concerned. It was conceded by the learned counsel for the petitioner that he was not challenging the vires of this section. So, for answering the first question, it has to be assumed that the section, as framed, is not hit by any Article of the Constitution. The argument on behalf of the petitioner was that even though nothing is mentioned in the section, it is implied that if the State Government was going either to suspend or remove from office the Executive Officer, he would be given an opportunity to show-cause against the proposed action under the principles of natural justice. The said principles, the argument proceeds, is implied in the section itself. The point for decision is whether that is so.

(10) If in this sub-section, the Legislature itself had provided that no opportunity to show cause would be given to the person concerned before action was taken by the State Government, would it be a bad piece of legislation? Learned counsel for the petitioner submitted that it would be so, but he was unable to support his submission either on principle or by quoting some decided case. The petitioner did not take the position that it was not within the legislative competence of the Punjab Legislature to enact the Punjab Municipal (Executive Officer) Act. This subject was undoubtedly covered by the "State list". It could also not be pointed out by the counsel that this legislation would be hit by any Article of the Constitution. A law cannot be declared to be void, simply because it offends the principles of natural justice. It has, therefore, to be assumed that if the Legislature, itself had mentioned that no opportunity would be granted to a person before action was taken against him under this sub-section,

it would be a good law and would not be struck down. Now the question is whether this very intention of the Legislature is not implied in the language used in the section itself; because if we come to that conclusion, then it was not necessary for the Legislature to specifically say so. The words *"at any time"* mentioned in this sub-section give a clear clue to the intention of the Legislature. By using this expression, the State Government was empowered to suspend or remove the Executive Officer *at any time*. It is true that under sub-section (1) if the Government was approving the recommendation of the Municipal Committee, the Executive Officer's apointment would be for a period of five years. It is further true that if the appointment was made by the Government under sub-section (4), the appointment could be for a period up to five years. But sub-section (7) governs the appointments made both under sub-sections (1) and (4). In other words, an Executive Officer appointed under any of these sub-sections could be removed *at any time* by the Government. It could not be said that his was a tenure job. When an Executive Officer accepts the appointment, he is supposed to know that even though the Municipal Committee was appointing him for a period of five years, yet the Government was entitled to remove him *at any time* even after say 15 days of his appointment. Under these circumstances, he cannot complain that he had a right to the post for a full period of five years, and if he knew that his services could be dispensed with *at any time*, then he cannot have any grievance if action is taken against him under sub-section (7) by the State Government without giving him any show-cause notice. He cannot say as to why and on what ground he was being removed and precisely for that very reason he also cannot say that he should have been given a show-cause notice before he was removed from his office. In other words, he has no right to the post for the full period of five years, so that if he is removed earlier, he is entitled to a show-cause notice. Take for instance, the case of a temporary government servant. He has no right to the post and even if his services are terminated after 15 days, he cannot say to the Government that he should have been given show-cause notice before action was taken against him. Principles of natural justice, in my opinion, only come into play when somebody has got a right to a post and even though the terms of his appointment do not say that he will be given a show-cause notice before his services are terminated, still he should be given such a notice before he is asked to go out of office. In that situation, he is entitled to ask the Government as to why his services are being dispensed with. When he accepted the appointment, both he and the Government knew

that he had a right to hold that post and if it was a tenure job, then both the parties fully realized that he had to remain there for a particular period. But, on the other hand, if in the very beginning he is told that though he is being appointed for five years, yet his services can be terminated at any time during that period by the Government, then he cannot complain as to why his services are being dispensed with earlier. Further he cannot be heard to say for what reason such an action is being taken against him. Principles of natural justice do not come in a situation of this kind. The Government can legitimately tell him that in the very beginning he was told that he could be asked to go *at any time* without assigning any reason. What possible grievance can such an employee have ? The principles of natural justice cannot be invoked by him. It cannot be seriously argued that the principles of natural justice will be attracted in each and every case and this principle is of universal application. It cannot be said that whenever the services of an employee of any kind are dispensed with, he can take refuge under that principle and demand a show-cause notice. As I have already observed that if an empolyee is told in the very beginning before he accepts the appointment that his services are at the pleasure of the Government and the same can be terminated *at any time,* he cannot have any grievance if the Government exercises that power without issuing a show-cause notice to him.

(11) The main reliance of the learned counsel for the petitioner was on the Supreme Court decision in *Dr. Bool Chand* v. *Chancellor, Kurukshetra University* (2). There the Chancellor (Mr. Hafiz Mohammad Ibrahim) appointed Dr. Bool Chand as the Vice-Chancellor of the Kurukshetra University. On 31st March, 1966. S. Ujjal Singh, the then Chancellor of that University, ordered that Dr. Bool Chand submitted his representation and soon thereafter and by another order, a notice was also issued requiring him to show-cause why his services as Vice-Chancellor be not terminated. Dr. Bool Chand submitted his representation and soon thereafter filed a petition in this Court in the nature of Mandamus for quashing the order and the show-cause notice. On 8th May, 1966, the Chancellor, in exercise of the power under sub-clause (vi) of clause 4 of Schedule I of the Kurukshetra University Act, 1956, read with section 14 of the Punjab General Clauses Act, 1898, pessed an order terminating with immediate effect the services of Dr. Bool

(2) A.I.R. 1968 S.C. 292.

Chand. Dr. Bool Chand then amended his petition in this Court and a writ of certiorari was also claimed. This Court rejected his petition and the matter was then taken to the Supreme Court.

(12) The first argument raised in the Supreme Court was that the Chancellor had no power to terminate the tenure of office of the Vice-Chancellor. Sub-clauses (vi) and (vii) of clause 4 provided :

> "(vi) The 'Upa-Kulapati' (Vice-Chancellor) shall be appointed by the 'Kulapati' (Chancellor) on terms and conditions to be laid by the 'Kulapati' (Chancellor),
>
> (vii) The 'Upa-Kulapati' (Vice-Chancellor) shall hold office ordinarily for a period of three years which term may be renewed".

(13) There was no express provision in the Kurukshetra University Act or the Statutes thereunder which dealt with the termination of the tenure of office of the Vice-Chancellor, but the Supreme Court acting on the principle that the power to appoint ordinarily carried with it the power to determine the appointment and also applying the provisions of section 14 of the Punjab General Clauses Act, came to the conclusion that the Chancellor had the power to terminate the tenure of the office of the Vice-Chancellor.

(14) It was then argued on behalf of Dr. Bool Chand, that the Chancellor was bound to hold an enquiry before determining his tenure and the enquiry ought to have been held in consonance with the rules of natural justice. While dealing with this point, the Supreme Court observed—

> "If the appointment of the Vice-Chancellor gave rise to the relation of master and servant governed by the terms of appointment, in the absence of special circumstances, the High Court would relegate a party complaining of wrongful termination of the contract to a suit for compensation, and would not exercise its jurisdiction to issue a high prerogative writ compelling the University to retain the services of the Vice-Chancellor whom the University does not wish to retain in service. But the office of a Vice-Chancellor is created by the University Act; and by his appointment the Vice-Chancellor is invested with statutory powers and authority under the Act. The petition filed by the appellant in the High Court is a confused document. Thereby the appellant did plead that the relation between him and the

University was contractual, but that was not the whole pleading. The appellant also pleaded, with some circumlocution that since he was appointed to the office of Vice-Chancellor which is created by the Statute, the tenure of his appointment could not be determined wthout giving him an opportunity to explain why his appointment should not be terminated. *The University Act, the Statutes and the Ordinances do not lay down the conditions in which the appointment of the Vice-Chancellor may be determined; nor does the Act prescribe any limitations upon the exercise of the power of the Chancellor to determine the employment. But once the appointment is made in pursuance of a Statute, though the appointing authority is not precluded from determining the employment, the decision of the appointing authority to terminate the appointment may be based only upon the result of an enquiry held in a manner consistent with the basic concept of justice and fairplay."*

(15) I have quoted the above passage *in extenso*, because it is on these observations that the entire argument of the learned counsel for the petitioner was based. He particularly referred to the lines underlined [in italics in this report] by me in the above passage and submitted that the Executive Officer Act also did not lay down the conditions in which the appointment of the Executive Officer might be determined and nor did that Act prescribe any limitations upon the exercise of the power of the State Government to determine the employment of the Executive Officer. But once a person is appointed an Executive Officer in pursuance of the Act so proceeds the argument, though the State Government is not precluded from determining his employment, the decision of the State Government to terminate the appointment must be based only upon the result of an enquiry held in a manner consistent with the basic concept of justice and fair play.

(16) There is a clear fallacy in this argument. In the Kurukshetra University Act and the Statutes and Ordinances thereof, it was provided that the Vice-Chancellor shall hold office ordinarily for a period of three years and that term could be renewed, but it was nowhere laid down that the Chancellor was authorised to terminate his tenure of office *at any* time during that period, as is the case under the Executive Officer Act. That is the main distinction in the two cases. There the Vice-Chancellor was given to understand that he will ordinarily hold the office for a term of three years

and naturally, therefore, if his tenure of office was being reduced, he was entitled to a show-cause notice under the principles of natural justice and ask as to why his services were being dispensed with earlier. In the instant case, however, the State Government had been given the power to terminate the services of the Executive Officer at any time and the said Officer fully knew and was well aware of that fact when he accepted the office, and, therefore, the question of giving any notice to him or informing him about the reasons for taking such an action against him did not arise at all.

(17) In *Dr. Bool Chand's case* (2), after referring to the following observations of Lord Reid in *Ridge* v. *Baldwin* (3):

> "So I shall deal first with cases of dismissal. These appear to fall into three classes; dismissal of a servant by his master, dismissal from office held during pleasure, and dismissal from an office where there must be something against a man to warrant his dismissal. The law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service, and the master can terminate the contract with his servant at any time and for any reason or for none. But if he does so in a manner not warranted by the contract he must pay damages for breach of contract. So the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence. It depends on whether the facts emerging at the trial prove breach of contract.
>
> Then there are many cases where a man holds an office at pleasure. Apart from judges and others whose tenure of office is governed by statute, all servants and officers of the Crown hold office at pleasure and this has been held even to apply to a colonial judge (Terrell v. Secretary of State for the Colonies (1953) 2 QB 482). It has always been held, I think rightly, and the reason is clear. As the person having the power of dismissal need not have anything against the officer he need not give any reasons.
>
> So I come to the third class, which includes the present case. There I find an unbroken line of authority to the effect that an officer cannot lawfully be dismissed without first telling him what is alleged against him and hearing his defence or explanation".

(3) 1964 A.C. 40.

The Supreme Court observed—

"The case of the appellant falls within the third class mentioned by Lord Reid, and the tenure of his office could not be interrupted without first informing him of what was alleged against him and without giving him an opportunity to make his defence or explanation".

(18) Here the case of the petitioner does not fall within the third class mentioned by Lord Reid, because the tenure of his office could, under section 3(7) of the Act, be interrupted at any time by the State Government without issuing any show-cause notice to him and he was in the knowledge of that fact when he accepted the appointment and joined the post.

(19) Learned counsel for the petitioner also referred to three other decisions—(i) *Calcutta Dock Labour Board and others* v. *Jaffar Imam and others* (4), (ii) *State of Orissa* v. *Dr. (Miss) Binapani Dei and others* (5), and (iii) *A. K. Kraipak and others* v. *Union of India and others* (6).

(20) In the case of *Calcutta Dock Labour Board and others*, the services of the Dock workers were terminated. While dealing with that matter, the Supreme Court held :

"When the appellant desired to take disciplinary action against the respondent workers on the ground that they being guilty of misconduct, it was absolutely essential for the appellant Board to have held a proper enquiry, whereat reasonable opportunity should have been given to the respondents to show-cause before reaching its conclusion. At the inquiry the appellant was bound to lead evidence against the respondents and give them reasonable chance to test the said evidence; allow them liberty to lead evidence in defence, and then come to a decision of its own. Not only the requirements of natural justice prescribed such an enquiry but an obligation to hold such an enquiry was also imposed on the appellant by clause (36) (3) of the Scheme of 1951 and clause 45(6) of the Scheme of 1956."

This case is of no assistance to the petitioner. There the Scheme had been made by the Central Government in exercise of the powers conferred on it by sub-section (1) of section 4 of the Dock Workers (Regulation of Employment) Act (IX of 1948) Clause (36) dealt with

(4) A.I.R. 1966 S.C. 282.

(5) A.I.R. 1967 S.C. 1269.

(6) 1969 S.L.R. 445.

disciplinary procedure and sub-clause (3), thereof laid down that before any action was taken, the person concerned had to be given an opportunity to show-cause why the proposed action should not be taken against him. That meant that the Scheme itself required that before any disciplinary action was taken against a worker an opportunity had to be given to him to show-cause. There is no such provision in the Executive Officer Act or the rules made thereunder.

(21) In *Dr. Binapani Dei's case* (5), an order of compulsory retirement had been based on a certain disputed date of birth. An enquiry was made to find out the correct date of birth of the petitioner, but she was not given the report of the Enquiry Officer. It was held that the order violated the principles of natural justice. While disposing of that case, the Supreme Court observed that even an administrative order, which involved civil consequences, had to be made consistently with the rules of natural justice. There is no quarrel with that proposition of law. The facts of that ruling, however, have no application to the present case.

(22) In the case of *A. K. Kraipak and others* (6), while holding that the rules of natural justice were applicable to administrative enquiries also the Supreme Court observed that the aim of the rules of natural justice was to secure justice or to put it negatively to prevent the miscarriage of justice. Those rules, according to the Supreme Court, could operate only in areas not covered by any law validly made. In other words, they did not supplant the law of the land, but supplement it. According to this authority, therefore, the rules of natural justice would operate if no law was made. But in the case in hand, as I have already mentioned above, it had been clearly stated in section 3(7) of the Act, that the State Government was fully empowered to suspend or remove the Executive Officer *at any time* and no limitations had been prescribed upon the exercise of that power. In face of this specific law, the petitioner could not invoke the principles of natural justice and claim a show-cause notice before his services were terminated. This decision also is, therefore, of no help to the petitioner.

(23) In view of what I have said above, I am of the opinion that the answer to the first question is in the affirmative. That being so, the second question referred to us, does not arise.

S. S. SANDHAWALIA, J.—I agree.

BHOPINDER SINGH DHILLON, J.—I agree.

K. S. K.

18983 ILR Govt. Press Chd.