

are by the statute and rules. As the liquidator Dharam Pai proceeded without hearing the parties his orders are a nullity and they cannot, therefore, be executed. I would, therefore, allow this appeal, set aside the orders of the Courts below and dismiss the application for execution. The appellant will have his costs in this Court and in the Courts below.

v.  
The Jagadhri  
Thathera Co-  
operative  
Society,  
Jagadhri  
—  
Kapur, J.

## CIVIL WRIT.

Before Kapur J.

DOGAR RAM,—Petitioner.

versus

SMALL TOWN COMMITTEE, SAMRALA,  
AND OTHERS,—Respondents.  
Civil Writ No. 296 of 1953.

*Small Towns Act (II of 1922), Sections 11, 14, 51 and Rules 3 and 3-A (framed under section 51)—Servants of the Small Town Committee dismissed in direct contravention of the rules framed under the Act—Whether such dismissal legal—Whether it can be justified on the ground that all servants of the committee hold office at the pleasure of the Committee.*

1954

July, 8th

*Held, that the dismissal of the servants in contravention of the Rules was illegal and could not be justified on the ground that the servants of the Small Town Committee hold office at the pleasure of the Committee, in view of the words of section 14 (2).*

*Prabhu Lal Upadhya v. District Board, Agra (1), McManus v. Bowes (2), Malik Narain Das v. District Board, Jhang (3), R. Venkata Rao, v. The Secretary of State (4) and V. A. Chellam Aiyar v. Corporation of Madras (5) distinguished.*

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- (1) I.L.R. 1938 All. 252  
(2) (1938) 1 K.B. 98  
(3) A.I.R. 1940 Lah. 71  
(4) I.L.R. 1937 Mad. 532  
(5) 42 I.C. 513

*Petition under Article 226 of the Constitution of India, praying that a Writ of Certiorari, Mandamus, Prohibition, or any other Writ or Direction or Order as the Hon'ble Court deems fit be issued against the respondents and the petitioner be re-instated as Teh Bazari Clerk and Octroi Superintendent of the Small Town Committee, Samrala, District Ludhiana, and costs may be awarded to the petitioner.*

SHAMAIR CHAND and P. C. JAIN, for Petitioner.

S. M. SIKRI, Advocate-General, for Respondent.

#### ORDER.

**Kapur, J.**

KAPUR, J. This judgment will dispose of two applications (Civil Writ Applications Nos. 296 and 297 of 1953) under Article 226 of the Constitution. In both these petitions the question involved is the same—the right of the Small Town Committee to dismiss a servant of theirs without there being a charge-sheet and a proper enquiry in accordance with the rules. In Civil Writ Application, No. 296 of 1953 Dogar Ram, the petitioner, was dismissed on the 8th April, 1953, under the directions of the Deputy Commissioner, dated the 25th March, 1953, on three grounds of negligence (1) that one Jagir Singh had imported a car without payment of octroi duty, (2) Ram Singh and Iqbal Singh had imported a tractor without payment of octroi duty, and (3) that Jagir Singh had imported some bricks into the Small Town Committee area without payment of octroi duty. The petitioner alleges that no charges were framed against him and his statement and evidence in defence were not recorded and no finding had been given in regard to each of the charges, that even where the Deputy Commissioner requires the dismissal of a servant the rules have to be followed, and that he appealed to the Deputy Commissioner as prescribed under the rules but his appeal was not decided by the Deputy Commissioner, Ludhiana, who dismissed it on the ground

that he had been advised by the Deputy Secretary of the Local Self-Government Department that such an appeal did not lie. It is admitted by the opposite party that no charges were framed and no opportunity was given as required under Rule 3(1) of the Rules of the Small Towns Act but it is pleaded that the officer-in-charge of the Local Bodies had explained the substance of the evidence against the petitioner to him and had recorded his statement on these three charges. They have also pleaded that there was an enquiry and the petitioner could not exonerate himself from the charge of slackness .....” and for that reason he has been dismissed.

Dogar Ram  
v.  
Small Town  
Committee,  
Samrala and  
others  
—  
Kapur, J.

In Civil Writ Application No. 297 of 1953, Ram Kishan who was the Secretary of the Samrala Small Town Committee was similarly dismissed on the 8th April, 1953, under the directions of the Deputy Commissioner, dated the 20th of March 1953. The charge against him was of his not submitting his explanation although he was called upon to do so twice. The charges against him were those contained in paragraph 6 and in his petition also he submits that Rules 3(1) and 3(3) made under the Act have not been complied with and therefore his dismissal is illegal. In their reply the opposite party have pleaded that provisions of Rule 3(1) of the Small Town Act Rules were duly observed in regard to the main charge, i.e., the Secretary did not bring to the notice of the Small Town Committee the orders passed on a previous application of Dalip Singh.

The learned Advocate-General showed cause on behalf of the Small Town Committee and submitted that it was not necessary to hold any enquiry when the Committee is called upon to dismiss a person under the directions of the Deputy

Dogar Ram v. Commissioner and he relied on section 11, Proviso (1) which is as under:—  
 Small Town Committee, Samrala and others  
 Kapur, J.

“If in the opinion of the Deputy Commissioner, for reasons to be stated in writing, any officer or servant employed by the committee is unfit for his employment the committee shall on the requirement of the Deputy Commissioner dismiss him.”

Section 14(2) is as follows:—

“14 (2) Subject to any rules which the State Government may make in this behalf, a committee may suspend or dismiss any of its officers or servants.”

The rule-making power is under section 51 and clause (d) of subsection (1) deals with regulating the dismissal by the Committee of its officers. Rules have been made under section 51 and are contained in the Small Towns Appointment, Suspension and Dismissal Rules of the 3rd of April, 1925, and the relevant Rules are Rules 3 and 3-A—

“3(1) When it is proposed to dismiss any officer or servant of a committee, the charges against him shall be framed in writing, and, together with the evidence in support of them, shall be explained to him, his statement and any evidence which he may produce in his defence shall be recorded, and a separate finding shall be recorded in respect of each charge.

(2) Any officer or servant of a committee who has been dismissed may, within thirty days of the date of the resolution or order of dismissal, appeal to the Deputy Commissioner, whose decision shall be final, provided that the Deputy

Commissioner may, if he thinks fit, for reasons to be recorded, admit an appeal lodged after the expiry of thirty days from the date of the resolution or order of dismissal.

Dogar Ram  
" "  
Small Town  
Committee  
Samrala and  
others

- (3) When the Deputy Commissioner requires a committee to dismiss any person under section 11 of the Punjab Small Towns Act, 1921, he shall follow the procedure prescribed by sub-rule (1) above.

Kapur, J.

- (3-A) When the Deputy Commissioner proposes to direct a Town Committee to dismiss any person under section 11 of the Punjab Small Town Act, 1921, he shall follow the procedure prescribed by sub-rule (1) of rule 3 above.

Rule 3(1) would apply to the Small Town Committee when the Committee wants to dismiss a particular officer, but reliance is placed on Rules 3(3) and 3-A which require that before the Deputy Commissioner directs the Small Town Committee to dismiss a particular officer he has to follow the rules prescribed in 3(1) and it is contended that as these rules have not been followed the dismissal is illegal.

The learned Advocate-General then submitted that all servants of the Committee hold office at the pleasure of the Committee and if there is a breach of the rules in regard to the dismissal of its servants there is no contravention of the statute and therefore the petitioners are not entitled to any relief. He relied on *Prabhu Lal Upadhya v. District Board Agra*, (1), where a Secretary of the District Board was dismissed upon a resolution

(1) I.L.R. 1938 All. 252

Dogar Ram  
 v.  
 Small Town  
 Committee,  
 Samrala and  
 others  
 ———  
 Kapur, J.

of the Board without complying with the requirements of section 71 of the District Boards Act and it was held that such a dismissal was illegal, but in dealing with these matters Harries, J., (as he then was) was of the opinion that dismissal in breach of the rules is not illegal. But in my opinion that was merely *obiter* because in that case there was a contravention of the statute and therefore this question did not directly arise. In *McManus v. Bowes*, (1), the words in the section were "may remove", and by a majority of two to one the Court of Appeal held that these words mean "remove at pleasure" and would override even a contract. In *Malik Narain Das v. District Board, Jhang*, (2), it was held that the position of an employee in the service of a District Board is the same as that of a Government servant and he holds office at the pleasure of the Board, and therefore he could be dismissed at pleasure, and reliance was placed on *R. Venkata Rao v. The Secretary of State*, (3). *V. A. Chellam Aiyar v. Corporation of Madras*, (4), was the next case relied upon. In that case it was held that servant of the Corporation holds office at the pleasure of the Corporation and could be dismissed by the President and he had no cause of action against the Corporation for this dismissal by the President and that where office is held at pleasure no notice or framing of the charge is necessary.

But in the present case the words of section 14(2) are quite different, i.e., "subject to any rules.....a committee may suspend.....". In *Venkata Rao's case*, (3), the question for decision was whether a dismissal in contravention of the

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(1) (1938) 1 K.B. 98

(2) A.I.R. 1940 Lah. 71

(3) I.L.R. 1937 Mad. 532(P.C.)

(4) 42 I.C. 513

rules could give a cause of action to a person aggrieved and it was held that he could not, but section 96-B begins—

“Subject to the provisions of this Act and of rules made thereunder, every person in the civil service of the Crown in India holds office during His Majesty’s pleasure.....”

Dogar Ram  
v.  
Small Town  
Committee,  
Samrala and  
others  
Kapur, J.

Therefore the section clearly stated that every person holding office did so during His Majesty’s pleasure which words do not exist in the present section and therefore in my opinion the contention that the Municipal servants hold office during the pleasure of the Committee does not seem to be well-founded. As I have said before *McManus’ case* contained the words “may remove” but not “subject to the rules”. The Allahabad case was *obiter* and in the Privy Council case the statute expressly said that service is during the pleasure of His Majesty. But in the present case the words are specific and therefore the dismissal has to be in accordance with the rules.

In his reply to the affidavit of Dogar Ram, Petitioner, the Deputy Commissioner has admitted that the Rules of the Small Towns Act were not observed in the case and that no charges were framed but the substance of the evidence was explained to him (Dogar Ram) by the officer in charge of the Local Bodies, Ludhiana, and in paragraph 7 it is stated that a regular enquiry was held and that during the enquiry it was found that the petitioner could not exonerate himself from the charge of slackness in his supervision and efficient discharge of his duties. Even in regard to Ram Kishan, petitioner, it is not definitely stated that any charges were framed although

Dogar Ram v. Small Towns Committee, Samrala and others

it is generally stated that provisions of Rule 3(1) of the Small Towns Act Rules were duly observed as regards one charge.

Kapur, J.

An explanation of Ram Kishan was obtained from which the Deputy Commissioner was of the opinion that Ram Kishan deliberately withheld the various reminders.

As to Dogar Ram, I am of the opinion that the provisions of Rule 3-A were not observed and the vague reply is not sufficient to prove that the Rules were observed. I examined Dogar Ram in Court and he has stated on oath that he was only examined in regard to the enquiry which was held against the President and that he was not examined in any other enquiry. In that view of the matter in my opinion there has been a violation of the Rules and there has been no proper enquiry before the Committee was called upon to dismiss Dogar Ram.

In *re. Ram Kishan* it is stated in his petition that his explanation was called thrice and every time he sent his explanation to the President and that it was the President who did not forward it on two occasions but the third one was. But even in his case I do not find that any charges were framed or enquiry was held which means that he should have an opportunity to prove his case by production of witnesses, and in regard to five matters it is admitted by the Deputy Commissioner that no enquiry was held. Therefore, in his case also there was a contravention of Rule 3-A of the Rules made under the Small Towns Act.

The learned Advocate-General has then submitted that Rule 3-A goes beyond the powers given under the rule-making Power under section



51(1)(d) of the Act which relate to regulating the appointment, dismissal or suspension by Committees of their officers and servants . . . . . This section deals with dismissals by the Committee, but even though a servant may be dismissed because of a direction by the Deputy Commissioner the dismissal is still by the committee and therefore a rule made regulating the procedure in regard to such dismissals will be covered by the words "dismissals by the Committee" and in my opinion the words are wide enough to cover Rule 3-A also.

Dogar Ram  
v.  
Small Town  
Committee,  
Samrala and  
others  
—  
Kapur, J.

I am, therefore, of the opinion that the petitioners have been wrongly dismissed and I would, therefore, set aside the order of the Committee dismissing the petitioners. The parties will bear their own costs in this Court.

CIVIL WRIT.

*Before Bhandari, C.J. and Khosla, J.*

S. RAGHBIR SINGH,—*Petitioner.*

*versus*

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 278 of 1952.

1954

*Evacuee Interest (Separation) Act (LXIV of 1951)—Section 9—Whether ultra vires the Constitution of India—Articles 14, 19 and 31 considered—Parliament, whether competent to enact Act LXIV of 1951—Entries 18 and 30 of the State List and Entry 41 of the concurrent Legislative List considered—Disposal—Whether covers extinguishment of a mortgage.*

July, 19th

*Held*, that the provisions of section 9 of the Evacuee Interest (Separation) Act, 1951, are consistent with and not violative of the provisions of Articles 14, 19 and 31 of the Constitution of India.