

Benarsi Das Vs. Municipal Board and anr.

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Court : Allahabad

Decided On : Nov-14-1938

Reported in : AIR1939All310

Appellant : Benarsi Das

Respondent : Municipal Board and anr.

Judgement :

Bennet, J.

1. This is a first appeal by Benarsi Das, plaintiff, late Head Master of the Primary School, Kathdarwaza, Moradabad, against defendant 1, the Municipal Board, Moradabad, through its Chairman, and defendant 2, M. Mohammad Nasim Khan, Executive Officer. The suit was one for wrongful dismissal and was dismissed by the lower Court, the learned civil Judge of Moradabad. Two points were taken, firstly, whether the suit was barred by Section 326(3). U.P. Municipalities Act 1916. The suit was filed on 10th July 1934 and it was admitted by counsel that 22nd January 1934 was the date when the plaintiff was asked to make over charge at Moradabad. The suit was filed against the Board in the first instance and therefore as against the Board it was within the six months prescribed by the Section. But the Executive Officer was not added until an application dated 28th August 1935. The suit against the Executive Officer was therefore barred by the rule of six months under Section 326(3). The Issue 2 was:

Does plaintiff's dismissal by the defendants entitle the plaintiff to institute a suit for damages against them?

2. On this ground the Court below held that such dismissal does not give a right of suit, following a ruling of this Court in Roshan Lal v. District Board, Aligarh : AIR1935All802 . The plaintiff sets out in his plaint that he was appointed by the Chairman of the Municipal Board on 5th January 1923 as a teacher and at the time of his dismissal he was Head Master of the Primary School at Kathdarwaza under the Municipal Board. He sets out in para. 5 that his wife had filed a suit against the Municipal Board, Original Suit No. 416 of 1932, and that he had given evidence in another suit against the Board. He also sets out that his school was inspected. Pie states then that an order of dismissal was sent to Mm but it did not contain particulars of any charge or reasons for his dismissal. In para. 14 he pleads that the Executive Officer is not in law authorized to dismiss him. In para. 15 he states that the plaintiff was never called upon to show cause why he should not be dismissed for anything alleged against him and in para. 16 he alleges that the dismissal of the plaintiff is wrongful, against law and ultra vires and malicious. He therefore in para. 18 claimed that ha would have served for a long number of years and would have

earned a good salary and he assessed his loss from dismissal at Rs. 7500 for which he sued as damages for wrongful dismissal. The U.P. Municipalities Act of 1916 as amended up to 1934 provides in Section 76 as follows:

Except as otherwise provided, the Executive Officer may punish or dismiss

(a) servants on a monthly salary not exceeding Rs. 15 or in a city Rs. 30; and

(b) servants on a monthly salary exceeding Rs. 15 but not exceeding Rs. 30; or in a city exceeding Rs. 30 but not exceeding Rs. 75; but in such case each order of dismissal or order imposing a fine exceeding in amount one month's pay of the person fined, or order of suspension for a period exceeding one month, or order of reduction by way of punishment shall be appealable to the Chairman : Provided that in case there is no Executive Officer the powers conferred by this Section may be exercised by the Chairman.

3. This Section provides that the Executive Officer may dismiss any servant on a monthly salary not exceeding Rs. 30 in a city. It is admitted by counsel for the plaintiff that the salary of the plaintiff at the time of dismissal was Rupees 22. The plaintiff therefore came under Section 76, Sub-section (a) and could be dismissed by the Executive Officer without any right of appeal. If he had come under Sub-section (b), he would have had a right of appeal to the Chairman. He did not in fact make any appeal. Learned Counsel argued that the provisions of Section 73 would apply and that the Education Committee would have power to dismiss the plaintiff. But that Section 73 only applies where there is a resolution of the Municipal Board to bring it into operation and it is not shown in the present suit that the Municipal Board of Moradabad has passed any such resolution. The power to dismiss therefore remains with the Executive Officer under Section 76. Section 76 does not lay down any limitation of the powers of the Executive Officer to dismiss and therefore he has full authority to dismiss. The case therefore differs from statutes which prescribe a particular method of the exercise of the power of dismissal. The cases which have come before this Court are some of them such cases, for example in *Prabhu Lal v. District Board of Agra* : AIR1938All276 there was an order of dismissal of a secretary of a District Board by a majority of the members at the meeting but not by the two-thirds majority laid down as necessary by the District Boards Act of 1922. Section 71 which prescribes that the dismissal of the secretary may be

(a) by a vote of not less than two-thirds of the total number of members of the board for the time being, or

(b) by a vote of not less than one-half of the total number of such members and is sanctioned by the Local Government.

4. As the dismissal of the secretary in that case did not comply with that statutory provision, it was held by this Court that the dismissal was wrongful and damages were awarded to the plaintiff. The case was held to be parallel to the case in *Gould v. Stuart* (1896) A.C. 575 in which there was statutory provision in the New South Wales Civil Service Act of 1884 which was held to negative the power of the Crown to dismiss at will and therefore the procedure laid down in the Act must be followed; On page 359 the ruling stated in regard to *Gould v. Stuart* (1896) A.C. 575:

This case is a clear authority for the proposition that if a statute contains any

provisions intended to afford protection to a servant, then the breach of such provisions will give the servant a cause of motion.

5. On page 356 it was held:

In this Court it has been held repeatedly that no valid distinction can be made between Government servants in the true sense of the word and persons in the position of the plaintiff serving local bodies created by statutes for the purposes of local Government.

6. And reference was made to Section 89, District Boards Act, laying down that officers nr servant; of the Board were public servants within the meaning of the Penal Code. On page 360 the position was summarized as follows:

A consideration of these authorities shows, in my opinion, that ordinarily the Government or public servant holds his office at pleasure and that he can be dismissed without cause assigned. Further, non-compliance with any rules framed under statutes by the Government or a public authority will not give it dismissed servant a cause of action as such rules are framed for the guidance of officers of the Government or the public authority and can be hanged from time to time. Therefore, a failure to simply strictly or at all with rules cannot give the servant a cause of action in damages or otherwise. On the other hand, authorities like *Gould v. Stuart* (1896) A.C. 575 and the cases which have followed it show shat where a statute under which an officer or servant is appointed imposes restrictions upon the power of dismissal, the failure to comply with the strict provisions relating to dismissal can give the servant a cause of action.

7. Theses quotations show that it was only because in that case there was a violation of special statutory provision that the learned Judges hold that the case was to be distinguished from the ruling referred for by the lower Court, *Roshan Lal v. District Board, Aligarh* : AIR1935All802 . That was a case in which it was held that in remedy lay in a suit for damages by the plaintiffs against the Board when the plaintiff claimed that he had been wrong-idly dismissed under the particular circumstances of that case, where there was not a resolution actually dismissing the secretary. The ruling proceeded on perfectly general grounds that a servant of the Hoard was under the same disability as other public servants and held his office at pleasures. We may also refer to *Municipal Board of Shahjabanpur v. Sukha Singh* : AIR1937All264 . In that case the suit no doubt was brought for declaration that the resolution dismissing the plaintiff was illegal and ultra vires and claiming arrears of salary. It was not, a suit for damages. But the question of the power of a Board to discharge was dealt with on page 157 in the following passage:

The learned Government advocate contended that this Section by implication empowered the Municipal Board to discharge servants whose services wore no longer required. There is certainly force in the contention. Apart altogether from Section 71, however, we are satisfied that a Municipal Board, like any other employer of labour, is entitled to discharge servants it no longer desires to employ. It is true that, while specific provision is made in the Act for the dismissal or punishment of a servant, there is no such provision for the discharge of any employee whose services are no longer required. Without special statutory provisions, however, a Municipal Board is clearly entitled to perform all the acts necessary in the conduct of its business. The discharge of servants, whose offices have been abolished as a matter of policy, is, in

our judgment, clearly a step which a Municipal Board is entitled to take in the conduct of its business. We would observe in this connexion that in the later Act of 1932, there is a special provision made for dispensing with the services of an employee by a Municipal Board.

8. The Court however stated that it did not desire to express an opinion as to whether the plaintiff could bring a suit for damages for wrongful dismissal. It is to be noted that the Municipalities Act deals with the question of dismissal of an Executive Officer and the Medical Officer of Health in Section 58 where, by an amendment in Act 5 of 1932, the two-thirds majority rule has been introduced, although that rule did not exist in the earlier Section of the Act of 1916. This Section 58 will also apply, as provided by Section 67(1) to the dismissal of a secretary. But these special statutory provisions do not apply to officers other than the officers mentioned in these Sections and a person like the plaintiff has no statutory provision in regard to the exercise of the power of dismissal in his case. Therefore, the power of dismissal in the case of a person like the plaintiff is exercisable by the Executive Officer without any qualification whatever and no suit for damages or wrongful dismissal will lie on the assumption that if the plaintiff had not been dismissed, he would have remained in service for a number of years and have earned a certain salary. Such a right might arise in case there was a special contract between the parties or in case there was express statutory provision, Neither exists in the present case and therefore the plaintiff held his office merely at pleasure like any other public or Government servant. For these reasons we consider that the Court below was correct in dismissing the suit of the plaintiff and we dismiss this first appeal with costs.

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