

**ALLAHABAD HIGH COURT**

Rameshwar Prasad

Vs.

Municipal Board Pilibhit

Civil Misc. Writ No. 2407 of 1956

(J. Sahai, J.)

17.03.1958

**ORDER**

**J. Sahai, J.**

1. The petitioners Nos. 1 to 3 have been employed by the Municipal Board of Pilibhit as Octroi Moharrirs, while petitioners Nos. 4 to 6 as Assistant Moharrirs in the said Municipal Board. In 1950, it seems, the State Government issued an order No. 765/IX-I. M. P. 250-1949 fixing minimum educational qualifications for the employees of the municipal boards functioning in this State. The petitioners were working on their posts on 12-7-1956 when the Municipal Board passed a resolution by a majority directing that removal notices be given to the Octroi Moharrirs who did not possess the minimum educational qualification prescribed by the aforesaid order. In pursuance of the said resolution the Executive Officer of the Board issued a notice to the petitioners, which runs as follows:

"Please take notice that your service will be terminated with effect from 16-10-1956 as per B. R. No. 9 dated 12-7-1956 as you do not possess the requisite qualifications. Please treat it as three months notice for the termination of your service." The petitioners' complaint is that before they were removed no notice was issued to them calling upon them to show cause against the proposed action, that the Government Order dated 10-4-1950 is ultra vires the powers of the Government, that the Municipal Board was not competent to remove the petitioners from their services, and that no power has been vested in the Government or in the Board or the Executive Officer to remove the petitioners who were permanent employees.

2. In my opinion the mere fact that no notice had been given to the petitioners before terminating their services would not invalidate either the resolution of termination or the notice issued in

pursuance thereof.

3. In the case of *S. D. Mathur v. Municipal Board, Agra*<sup>1</sup>, it was held by this Court that the services of a municipal servant could not be terminated without furnishing him an

<sup>1</sup>1956 All LJ 71: ( AIR 1956 All 181)

opportunity of showing cause as required by the paragraphs appearing on pages 454 and 654 of the Municipal Manual. The relevant paragraph on page 454 is as follows:

"The principle that before dismissal an employee should be given a hearing and his reply reduced to writing and formal orders recorded should be observed, in justice to their servants, by municipal boards."

It will be noticed that this paragraph has no statutory force because it has no statutory foundation. It is based on a circular issued by the State Government. A circular cannot have statutory force. But apart from it, to my mind, this rule or provision is recommendatory and not mandatory in its nature. The word 'should' used in the said provision is significant. However in view of the fact that I have not considered this paragraph to have any statutory force its breach does not confer on the petitioners any right of action.

4. My attention has also been invited to page 654 of the Municipal Manual, where the following words occur:

"1. No officer or servant shall be dismissed, removed or reduced without a reasonable opportunity being given to him of showing cause against the action proposed to be taken in regard to him. Any written defense tendered shall be recorded and a written order shall be passed.

2. Every order of dismissal, removal or reduction shall be in writing and shall specify the charge or charges brought the defense and the reasons for the order."

5. This paragraph also to my mind has no statutory force and in fact it appears that it was only a draft regulation and in the present case it has not been shown to me that the draft regulation was ever accepted as regulation either by the Municipal Board or by the Government. It will be noticed that at the bottom of page 653 the following words occur:

"The principle cited on p. 453 of this Manual that before dismissal an employee shall be given a hearing and his replies reduced to writing and formal orders recorded, should be observed, in justice to their servants, by boards. It is suggested that boards might make regulations similar to the draft regulations below."

And below these words are the regulations which I have quoted earlier occurring on p. 654. It is therefore obvious that ..... the aforesaid regulations cannot be treated as conferring on the

petitioners any right, the breach of which would entitle the petitioners to take any action. I, therefore, find no substance in the ground that the petitioners were not given a notice calling upon them to show cause why their services should not be terminated and they are entitled to such a notice. For the same reasons I am unable to agree with the decision mentioned above.

6. I am inclined to agree with Mr. Shanti Bhushan, learned Counsel for the petitioners, with regard to the ground relating to the nature of the Government Order dated 10-4-1950. There is no provision in the Municipalities Act apart from the provisions of Section 57, 66, 68 and 70, which gives the Government the power to lay down the conditions of service or the qualifications of municipal servants other than those covered by the aforesaid sections. My attention has been invited by the learned Counsel appearing for the State to Section 71 of the U. P. Municipalities Act and it is contended that the aforesaid Order has been issued under that section. Section 71 runs as follows :

"71. Except as provided by Sections 57, 66, 68 and 70 and subject to any general or special directions as the State Government may from time to time issue, a board may, by resolution, determine what servants are required for the discharge of the duties of the board and the salaries to be paid to them respectively."

This section would show that the State Government no doubt, can issue general or special directions to a board with regard to the determination of the strength of the servants, the discharge of their duties and the salaries to be paid to them respectively. This section does not to my mind confer on the State Government the power to fix minimum qualifications required from persons who were appointed either Octroi Moharrirs or Assistant Moharrirs. In that view of the matter I am of the opinion that the State Government could not have issued Order No. 765/IX I. M. P. 250-1949, dated 10-4-1950.

7. The next question to consider is whether the services of the petitioners could be terminated by the Board or by the Executive Officer, and whether it is permissible under the provisions of the Municipalities Act to terminate the services of a municipal employee except by an order of dismissal or by way of retrenchment. Section 75 of the U. P. Municipalities Act confers on the Executive Officer the power to appoint servants on a salary not exceeding Rs. 40/- per month and in the case of a city not exceeding Rs. 50/- per month. Section 76 of the Act similarly permits the Executive Officer of the Board to punish or dismiss a municipal servant whose salary does not exceed in the case of a non-city Municipal Board Rs. 40/- and in the case of a city Rs. 50/-. It would thus be seen that the Executive Officer had the power to dismiss or punish the petitioners. The next question would be whether the Executive Officer alone could do so? Section 60 of the Act lays down that in respect of servants of the board, the powers vested in the Executive Officer by Sections 75 and 76 and the power to grant leave of absence to the holder of any post to which he had power to appoint, shall be exercised by the Executive Officer. It would be noticed that the opening words of Section 60 run as follows :

"60 (1) In any municipality where there is an executive officer appointed under Section 57 or 65, the following powers of the board shall be exercised by such officer, and not otherwise. ...."

This would show that the functions of the Board which are mentioned in Section 60 shall be exercised only by the Executive Officer and not by any one else. It is hue that those are the functions of the Board, but the Act requires that those functions of the Board shall not be exercised by the Municipal Committee, but by the Executive Officer. The word 'municipal board' as used in the Municipalities Act has a comprehensive meaning. It not only includes the municipal committee or Municipal Board but also the Executive Officer.

8. Section 2 runs as follows :

"2 .....

(1) "Board" means a municipal board and shall include, in any case where a power is expressed as being conferred or a duty as being imposed on a board, a committee appointed by a board and any member, officer or servant of a board authorized or required by or under this Act to exercise the power or perform the duty".

(2)

It would, therefore, appear that if a duty is enjoined upon a particular officer, then he alone would be deemed to be the board for the purpose of the exercise of that duty or power. I am of the opinion that, it is the executive officer alone who could dismiss or punish a municipal servant in a non-city board whose pay is less than Rs. 40/- per month. In the present case the notice terminating the petitioners' services has been given by the executive officer. The said notice runs as follows :

"Please take notice that your service will be terminated with effect from 16-10-1956 as per B. R. No. 9 dated 12-7-1956 as you do not possess the requisite qualifications. Please treat it as three months notice for the termination of your service." The notice is of the executive officer though it has been issued because of the resolution of the board. The complaint of the learned Counsel for the petitioners that the services of the petitioners have been terminated by the board is not quite correct. Actually they were terminated by the executive officer.

Even though it be held as the petitioners want me to hold that the board had no jurisdiction to pass the resolution terminating the services of the petitioners the notice issued by the executive officer cannot be invalidated on that ground. It was held in the case of *Jagannath Prasad v. State of U. P.*<sup>2</sup>, that even though the recommendations of a disciplinary tribunal were not binding on a Governor and even though he may have purported to have acted on the recommendations of the tribunal and dismissed a government servant, his order cannot be assailed so long as it was not

contended that he had not the power to dismiss. Similarly in the case of *Sri Badri Prasad Rastogi v. President Dt. Board, Mirzapur*<sup>3</sup>, where an order was passed by the President, which he was competent to pass but it was based on the advice of a committee which could not legally proceed in the matter, it was held by this Court that the order of the President could not be challenged. So long as the executive officer could validly terminate the services of the petitioners, the petitioners cannot complain that he has done so at the instance of the board. I, therefore, overrule this contention of the learned Counsel for the petitioners.

9. There is another way of looking at the matter. Section 76 of the U. P. Municipalities Act gives power to the executive officer to dismiss and punish but not to terminate the services of a municipal servant for no fault. Ordinarily the word "dismissal" would include "removal" also and if the executive officer has the power to dismiss he has also the power to remove. But then removal must be by way of punishment. The whole scheme of Section 76 of the U. P. Municipalities Act shows that the power conferred on the executive officer under that section was confined to cases of disciplinary action and not to those of termination of services by notice. It was held by a Division Bench of this Court in the case of *Roshan Lal v. District Board, Aligarh*<sup>4</sup>, as also that

<sup>2</sup> AIR 1954 All 629    <sup>4</sup>158 Ind Cas 626 : ( AIR 1935 All 802)

<sup>3</sup>1952 All LJ 56: ( AIR 1952 All 681)

of *Municipal Board, Shahjahanpur v. Sukha Singh*<sup>5</sup>, that municipal servants or the District Board servants are at the pleasure of the board and the board can terminate their services. See also the case of *Prabhu Lal Upadhaya v. District Board, Agra*<sup>6</sup>, where the same ' law was laid down in respect of the servants of the District Board. A similar view was taken by the Punjab High Court in the case of *Smt. Ram Piari v. Municipal Committee Pathankot*<sup>7</sup>, where it was observed as follows :

"Now, Ram Piari was employed by the Municipal Committee to work and serve as a Headmistress in the Municipal Board Primary Girls' School at Pathankot. The relationship of master and servant thus came into existence between them. The resolutions of 1950 and 1951 under which Ram Piari agreed to serve the Municipal Committee do not contain any stipulation in regard to the period of her employment as Headmistress, nor are there any terms laid down in these resolutions on which she should be reverted if necessary.

Thus there are no contractual or statutory provisions which govern the rights of the parties in the present case. That being so, the Municipal Committee enjoys an absolute power to put an end to the personal relations created by the employment at any time without giving the employee any reason for doing so or any opportunity for showing cause against the proposed action. It, therefore, follows that the plaintiff was not entitled to get any opportunity to explain her position to her employer before she was demoted. That being so, the plaintiffs suit was rightly dismissed by the lower appellate court."

10. In the present case the board is the employer and the petitioners are the employees. Under the

general law of master and servant also the board has a right to terminate the services of the petitioners except in the circumstances mentioned in Section 76 of the U. P. Municipalities Act, that is to say, except by way of punishment. There is nothing in the U. P. Municipalities Act, which in any way curtails the power of the board to remove the petitioners on any ground other than those covered by Section 76 of the U. P. Municipalities Act, Therefore even if it be taken that the board had no power to terminate the services of the petitioners by asking the executive officer to give notice, the board's resolution doing so cannot be challenged. Mr. Shanti Bhushan has invited my attention to some provisions of the English Municipalities Act and some passages from Halsbury's Laws of England and has submitted that a municipal servant is not at the pleasure of the municipal board whatever may be the law with regard to a civil servant. I need not consider those provisions in view of the decisions of this Court which have been mentioned before in this judgment and which being Division Bench cases are binding upon me. Mr. Shanti Bhushan contends that those cases are not the authorities for the proposition that a municipal board can terminate the services of its employees at pleasure but only in certain circumstances e.g., where the post is abolished or where there is a financial stringency. I am unable to agree with this. In my opinion those cases are authorities for the proposition that except where the Act itself says otherwise, the pleasure of the Board is supreme and it can terminate the services of its employees for whatever reason, though for illegal removal it would be liable for damages. Apart from all this, even if it be taken for granted that the Board did not terminate the petitioner's services in accordance with the law, the petitioners would not be entitled to get the relief of

<sup>5</sup> AIR 1937 All 264      <sup>7</sup> AIR 1956 Pun 220

<sup>6</sup> AIR 1938 All 276

reinstatement which in effect they ask for by praying for a writ of mandamus commanding the respondents not to enforce the removal notice dated 17-7-1956 or the board's resolution dated 12-7-1956 which the petitioners have also prayed to be quashed. It was held in the cases of this Court mentioned above that even though a municipal employee is wrongfully dismissed no suit for reinstatement would lie and all that he is entitled to is a suit for damages. That being so the petitioners are not entitled to the reliefs claimed by them. I have already held that the Government had no jurisdiction to issue the circular and to prescribe the minimum qualifications. That being so though the notice terminating the petitioner's services or the resolution asking the services to be terminated cannot be quashed or made incapable of enforcement by the issue of a writ of mandamus, there is nothing which prevents the board or the executive officer from withdrawing the notice and cancelling the resolution dated 12-7-1956.

11. In view of what I have said above the petitioners are not entitled to any relief from this Court. The petition is accordingly dismissed but there is no order as to costs. The stay order dated 10-9-1956 is vacated.

Petition dismissed.