

Municipal Committee Sultanpur Lodhi and another v. Banwari Lal
and others (R. N. Mittal, J.)

Act, did not comply with the requirements of Order XXXIII, rule 2, of the Code and might therefore be defective in form. But, for that defect in form, Khanta's application for permission to sue in *forma pauperis* could not be rejected. From the above two cases, it is clear that the learned Judges decided the former case on the facts and in the circumstances of that case. In *Suraj Prasad's case* (supra) it appears that the names of the persons for whose benefit the suit could be brought, were not mentioned in the plaint. In *Satyabati's case* (supra), the name of the father who was financially well off, had not been mentioned in the application for permission to sue as pauper. In the circumstances, it was held that omission to mention father's name in the application was fatal. In my view, all the above cases are distinguishable and the learned counsel for the respondents cannot derive any benefit from the observations therein.

(10) For the aforesaid reasons, I accept the appeal, set aside the order of the trial Court and remand the case to it for deciding the application for permission to sue as indigent persons on merits.

No order as to costs.

The parties are directed to appear in the trial Court on September 28, 1987.

S.C.K.

Before R. N. Mittal, J.

MUNICIPAL COMMITTEE SULTANPUR LODHI AND
ANOTHER,—Appellants.

versus

BANWARI LAL AND OTHERS,—Respondents.

Regular Second Appeal No. 1539 of 1985.

September 9, 1987.

Punjab Municipal Act (III of 1911)—Section 236—Proof of age accepted by Resolution of the Municipal Committee—Government annulling Resolution and directing the Committee to retire employee

on superannuation—Relieving order passed pursuant to direction without issuing show-cause notice to employee—Non-issuance of show-cause notice—Whether invalidates the order—Right of hearing—Whether required to be given to employee.

Held, that the employee cannot make any grievance against the order of the State Government annulling the Resolution of the Municipal Committee without affording him an opportunity of being heard. Consequently the challenge to the order of the Executive Officer relieving him is without merit. The Executive Officer while relieving the employee from service was carrying out the order of the Government and therefore it was not necessary for him to give an opportunity to the employee of being heard. The Executive Officer had also no power to review the order of the Government. Therefore, even if an opportunity had been given by him to the employee that would have been without any purpose.

(Para 6)

Regular Second Appeal from the decree of the Court of the District Judge, Kapurthala, dated the 5th day of January, 1985 affirming that of the Senior Sub Judge, Kapurthala dated the 15th February, 1983, awarding a decree in favour of plaintiff and against defendants Nos. 1 to 3 for declaration to the effect that the impugned order is wrong, illegal and imperative qua the rights of the plaintiff and further awarding ex-parte decree with the same terms in favour of the plaintiff against defendant No. 4 and further ordering that the competent authority shall, however, be entitled to pass a fresh order after providing opportunity to the plaintiff of being heard in the light of the observations made in the judgment and leaving the parties to bear their own costs.

V. G. Dogra, Advocate, for the Appellants.

S. D. Sharma, Advocate, for the Respondents.

JUDGMENT

R. N. Mittal, J.

(1) This appeal has been filed by Municipal Committee, Sultanpur Lodhi and the Executive Officer of the said Committee against the judgment and decree of District Judge, Kapurthala, dated 5th January, 1985.

(2) Briefly, the facts are that the plaintiff was appointed as a Peon by the Municipal Committee,—*vide* resolution No. 133 dated 28th November, 1953 (Exhibit P. 1). He joined the service as such

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on 1st December, 1953. In the service book, his date of birth was shown as 15th November, 1928. An objection was raised by the Local Fund Examiner in the year 1976 after seeing the entry regarding plaintiff's age on the ground that the record had been changed. Consequently, he asked the Municipal Committee to find out after inquiry, the correct age of the plaintiff. The Municipal Committee,—vide letter No. 295-76 dated 22nd March, 1976 (Exhibit P. 3) asked him to give proof of his age. He submitted a medical certificate dated 11th July, 1979 wherein it was mentioned that he was 54/55 at that time. From the aforesaid certificate and certain other circumstances, the Municipal Committee came to the conclusion that the date of birth of the plaintiff had been correctly shown as 15th November, 1928 in his service book and consequently, it,—vide resolution No. 88 dated 21st February, 1980 (Exhibit P. 10) accepted his date of birth as 15th November, 1928. The resolution was annulled by the Government under section 236 of the Punjab Municipal Act,—vide order No. 7334 dated 18th July, 1980 (Exhibit P. 12). After doing so it wrote to the Municipal Committee that as the plaintiff had reached the age of superannuation, therefore, he should be relieved forthwith. The Executive Officer in pursuance of the direction of the Government, relieved the plaintiff on 23rd July, 1980. He has challenged the order of the Executive Officer relieving him from service.

(3) The suit was contested by the Municipal Committee and the Executive Officer, who, *inter alia*, pleaded that the order dated 23rd July, 1980 was a lawful order and the plaintiff was not entitled to be retained in service in view of that order.

(14) The learned trial Court held that while issuing the order dated 23rd July, 1980, the Executive Officer did not afford any opportunity to the plaintiff to show cause, therefore, the said notice was illegal and void. Consequently, it set aside the impugned order with the observations that the competent authority would be entitled to pass a fresh order after providing an opportunity to the plaintiff of representing his case. The Municipal Committee, the President of the Municipal Committee and the Executive Officer filed an appeal before the District Judge, Kapurthala who affirmed the judgment and decree of the trial Court and dismissed the same. The Municipal Committee and the Executive Officer have come up in second appeal to this Court.

(5) The learned counsel for the appellant has argued that the Government had annulled the resolution of the Municipal Committee dated 21st February, 1980 (Exhibit P. 10) and directed the Executive Officer to retire respondent No. 1 as he had already reached the age of superannuation. In pursuance of that order he was relieved. The Executive Officer, it is argued, was carrying out the order of the Government and, therefore, it was not necessary for him to serve any notice on respondent No. 1 before relieving him. On the other hand, Mr. S. D. Sharma, has submitted that after the resolution of the Municipal Committee was annulled by the Government, it was incumbent upon the Executive Officer to have given show cause notice before relieving him, so that he could prove that his date of birth was 15th November, 1928, and, therefore, he could not be relieved.

(6) I have considered the arguments of the learned counsel and find force in the contention of the counsel for the appellant. The Municipal Committee, as already mentioned, had accepted the proof of age produced by respondent No. 1 and passed a resolution Exhibit P. 10 that his date of birth was 15th November, 1928. However, the Government did not agree with the decision of the Municipal Committee and consequently, it annulled the resolution. The grievance of respondent No. 1 in fact, appears to be that the Government could not annul the resolution unless he was given an opportunity of being heard. However, he could not make that grievance in view of the observations of this Court in *Shri Baldev Raj Sharma vs. The State of Punjab and another* (1), wherein it was observed that "Sub-section (2) of section 236 of the Punjab Municipal Act, 1911 authorises the State Government to annul or modify and proceeding of a Municipal Committee which it considers to be not in conformity with law or with rules as are in force. It does not expressly state that before passing the order notice has to be issued to the Municipal Committee concerned or to any person who is affected by that resolution or annulment order. It was only the Municipal Committee whose resolution is annulled and that can be said to have a grievance and the person to whom that resolution relates, has no right to urge that he has not been given any notice or hearing before annulling that resolution." The above view was confirmed by the Division Bench to which I was a member, in *Karam Singh vs. The State of Punjab and others* (2). Thus, respondent

(1) 1972 P.L.R. 144.

(2) 1979 P.L.R. 426.

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No. 1 could not make any grievance against the order of the State Government annulling the resolution of the Municipal Committee without affording him an opportunity of being heard. Consequently, he challenged the order of the Executive Officer relieving him. The Executive Officer while relieving him from service was carrying out the order of the Government and, therefore, it was not necessary for him to give an opportunity to respondent No. 1 of being heard. He had also no power to review the order of the Government. Therefore, even if an opportunity had been given by him to respondent No. 1, that would have been without any purpose. Consequently, I accept the submission of the learned counsel for the appellant and reject that of respondent No. 1.

(7) For the aforesaid reasons, I accept the appeal, set aside the judgment and decree of the Courts below and dismiss the suit of the plaintiff. No order as to costs.

R.N.R.

Before R. N. Mittal, J.

REKHA SHARMA,—Petitioner.

versus

SHANKAR DEVI AND OTHERS,—Respondents.

Civil Revision No. 1928 of 1983.

November 24, 1987.

East Punjab Urban Rent Restriction Act (III of 1949)—Gift deed—Validity of—Motive behind gift—Such questions—Authorities under the Act—Whether have jurisdiction to decide.

Held, that the Supreme Court of India was of the view that in rent cases the question of the validity of the sale of property in favour of the landlord could be gone into by the Rent Controller. In view of the law laid down by their Lordships of the Supreme Court, the authorities under the East Punjab Urban Rent Restriction Act, 1949 have jurisdiction to determine the question whether the gift deed is a valid or a sham transaction. (Para 7).

Petition for Civil Revision under Section 15(V) of the East Punjab Urban Rent Restriction Act, 1949, against the order of the