

Criminal or Revenue Court for obvious reasons because the functions discharged by him do not fall within the ambit of the Civil, Criminal or Revenue Court as defined in the Code of Civil Procedure, Punjab Courts Act, Code of Criminal Procedure, the Punjab Land Revenue Act, and the Punjab Tenancy Act. Shri B. D. Dhawan as Settlement Officer, could have convicted the petitioner under section 228 of the Indian Penal Code in the exercise of powers conferred by section 480 of the Code of Criminal Procedure if he had been a Civil, Criminal or Revenue Court. Therefore, the impugned order was passed by him without any jurisdiction and as such has to be quashed.

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—
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In the result, the petition under Article 227 of the Constitution is allowed and the order of Shri B. D. Dhawan, Settlement Officer, respondent convicting the petitioner under section 228 of the Indian Penal Code and sentencing him to pay a fine of Rs. 200 is quashed. The amount of fine, if paid, should be refunded.

B.R.T.

APPELLATE CIVIL

Before S. S. Dulat and A. N. Grover, JJ.

THE MUNICIPAL COMMITTEE, RAMPURA PHUL,—*Appellant.*

versus

AMAR NATH KARKARA,—*Respondent.*

Letters Patent Appeal No. 128 of 1964.

*Punjab Municipal Act (III of 1911)—S. 240—Rules framed under—
Punjab Municipal Account Code—Rule V. 4—Post of Octroi Superintendent—Whether can be retrenched and services of the incumbent of
the post terminated.*

1965

February, 11th.

Held, that sub-rule (1) of rule V. 4 of the Punjab Municipal Account Code makes no distinction whatsoever between Committees, where octroi (without refunds) is in force and any other class of Committees and it provides in mandatory terms that an officer has to be appointed as an Octroi Superintendent who has to discharge the duties imposed upon him by the rules and has to be responsible generally for the assessment and collection of octroi. He

has further to exercise supervisory powers over junior officers like Assistant Octroi Superintendents appointed under the provisions of rule V. 5 or sub-rule (2) of rule V. 4. All that sub-rule (2) contemplates is that in Municipalities where octroi (without refund) is in force, an Assistant Octroi Superintendent or more than one such officer can be appointed and he can be assigned certain functions and duties which the Octroi Superintendent alone is empowered to discharge under the rules. There is no indication in sub-rule (2) that in such Municipalities an Octroi Superintendent need not be appointed at all. Once an Octroi Superintendent has been appointed that post cannot be retrenched with a view to terminate his services. His services are to be terminated in accordance with the statutory provisions or the rules and that result cannot be achieved by retrenching the post because sub-rule (1) compulsorily provides for the existence of that post.

Letters Patent Appeal under Clause X of the Letters patent against the judgment of the Hon'ble Mr. Justice D. K. Mahajan passed in Civil Writ No. 530 of 1963 on 20th February, 1964.

H. S. WASU, AND L. S. WASU, ADVOCATES, for the Appellant.

B. R. AGGARWAL, ADVOCATE, for the Respondent.

JUDGMENT

The following Judgment of the Court was delivered by—

Grover, J.

GROVER, J.—This is an appeal under clause 10 of the Letters Patent against an order of a learned Single Judge allowing a petition of the respondent and quashing the resolution of the appellant-committee with regard to the retrenchment of the post of the Octroi Superintendent of the Rampura Phul Municipality of which the respondent was the incumbent.

It was not disputed before the learned Judge that the respondent was holding the aforesaid post in a substantive capacity. The Municipal Committee retrenched the services of 20 employees including those of the respondent after giving one month's notice.

Certain rules, which are incorporated in the Punjab Municipal Account Code, had been framed under section 240 of the Punjab Municipal Act, 1911, Rule V. 4 is in the following terms:—

- “(1) The committee shall appoint an officer to be Octroi Superintendent who, in addition to discharging any other duties imposed upon him by these rules, shall be responsible generally for the

assessment and collection of octroi in accordance with these rules and for the proper discharge of their duties by other inspecting, collecting or assessing officers, including the Assistant Octroi Superintendent, if any, appointed under the provisions of Rule V. 5 or under sub-rule (2) of this rule.

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- (2) In municipalities where octroi (without refunds) is in force the Committee may appoint one or more Assistant Octroi Superintendents or Octroi Inspectors and may with the previous sanction in writing of the Deputy Commissioner determine by resolution which functions and duties imposed by these rules upon the Octroi Superintendent may be discharged by such Assistant Octroi Superintendents or Octroi Inspectors."

The learned Single Judge was of the view that according to sub-rule (1) of the above rule, the Committee was bound to appoint an Octroi Superintendent and since the respondent was the incumbent of that post, the Committee could not retrench that post so as to have the effect of terminating the services of the respondent. It was contended before him on behalf of the Committee that under sub-rule (2) of the same rule the Assistant Octroi Superintendent had been invested with the powers of the Octroi Superintendent and, therefore, there had been due compliance contained in the rule but the learned Judge was of the opinion that that furnished no answer to the argument raised on behalf of the respondent that the post could not be abolished or retrenched because under sub-rule (1) the Committee was bound to have an Octroi Superintendent.

Mr. H. S. Wasu, who appears for the appellant-committee, has sought to rely on sub-rule (2) and has contended that in Municipalities where octroi (without refunds) is in force the committee is entitled to appoint one or more Assistant Octroi Superintendents and can with the previous sanction in writing of the Deputy Commissioner determine by resolution which functions and duties imposed by the rules upon the Octroi Superintendent may be discharged by such Assistant Octroi Superintendents.

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According to Mr. Wasu, in cases of such Municipalities where octroi (without refunds) is in force, it is not obligatory to appoint an Octroi Superintendent as provided by sub-rule (1). It is difficult to accede to this contention because the language of sub-rule (1) makes no distinction whatsoever between Committees where octroi (without refunds) is in force and any other class of Committees and it provides in mandatory terms that an officer has to be appointed as an Octroi Superintendent who has to discharge the duties imposed upon him by the rules and has to be responsible generally for the assessment and collection of Octroi. He has further to exercise supervisory powers over junior officers like Assistant Octroi Superintendents appointed under the provisions of Rule V. 5 or sub-rule (2) of Rule V. 4. All that sub-rule (2) contemplates is that in Municipalities where octroi (without refunds) is in force, an Assistant Octroi Superintendent or more than one such officer can be appointed and he can be assigned certain functions and duties which the Octroi Superintendent alone is empowered to discharge under the rules. As observed before there is no indication in sub-rule (2) that in such Municipalities an Octroi Superintendent need not be appointed at all. At any rate, the question in the present case is of a different nature. The respondent had been appointed to a post which is provided by sub-rule (1). So long as his appointment was not terminated in accordance with the statutory provisions or the rules, that result could not be achieved by retrenching the post because sub-rule (1) compulsorily provides for the existence of that post. Even if ordinarily under sub-rule (2) the appellant-committee could appoint an Assistant Octroi Superintendent and confer upon him the functions and duties imposed upon the Octroi Superintendent, that power was not initially exercised and it was under sub-rule (1) that an Octroi Superintendent was appointed. Once an appointment had been made under that provision, the post could not be abolished in the absence of any specific provision in the rules or the statute so as to deprive its present incumbent from holding that post. The view, therefore, which has been taken by the learned Single Judge is unexceptionable and this appeal must fail which is dismissed with costs.

B.R.T.