(1945) 03 AHC CK 0021

Allahabad High Court

Case No: None

District Board		APPELLANT
	Vs	
Kailash Nath Kapoor		RESPONDENT

Date of Decision: March 20, 1945

Citation: AIR 1946 All 234

Hon'ble Judges: Mathur, J; Dar, J; Allsop, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Allsop, J.

The plaintiff-respondent, Kailash Nath Kapur, was the Secretary of the District Board of Shahjahanpur. The Board dismissed him on 29th January 1940, and his appeal to the Government failed. The Board then passed an ordinary resolution on 16th February 1941, that the part of the respondent''s provident fund contributed by the Board (including interest) should be forfeited and the respondent on 11th March 1941, instituted the suit which has given rise to this appeal in order to obtain the sole relief that an injunction should be granted restraining the Board from carrying out or giving effect to the resolution. The respondent had not given the Board the notice required by Section 192, District Boards Act, 1922. The respondent''s first allegation was that the resolution of dismissal was illegal and ultra vires. The lower Court held that that was a matter which it had no jurisdiction to consider. This decision was not questioned in the arguments before us and I understand that the question has been raised in a separate suit which is pending.

2. The second allegation was that the resolution confiscating part of the provident fund was illegal, ultra vires and ineffective because it was never formally moved or seconded, because votes were not taken by a show of hands and a poll was not held in spite of a demand, because the resolution was not a special resolution and because the provisions of Section 6(b), Provident Funds Act, 1925, prevented the Board from withholding any part of the amount due to the respondent. The Court

below found against the respondent upon the first three of these grounds but found in his favour upon the fourth and consequently granted him the injunction which he sought. The District Board has appealed against this decision and has also urged that the respondent was not entitled to institute the suit without giving notice under the provisions of Section 192, District Boards Act, 1922, and that the Court below should not in its discretion have granted an injunction in the circumstances of the case. The respondent has not questioned the decision of the Court below on the first two grounds and it is difficult to see how he could have done so as the proceedings of the Board show that the matter was placed before a meeting when eight members voted in favour of the forfeiture and three (who were named) against it.

3. He has, however, contended that the question at issue should have been decided by a special resolution. He relies upon the provision in Section 71, District Boards Act, 1922, that a Board may by special resolution punish or dismiss its Secretary. He contends that the forfeiture of part of his provident fund amounted to a punishment. I agree with the learned Judge of the Court below that it was not a punishment. He had already been punished by dismissal and the forfeiture was the result of the exercise of discretion in the matter of a monetary obligation to a person who was no longer a servant of the Board. The motive behind the decision appears to me to be irrelevant. The question whether the Board had power to forfeit part of the respondent''s provident fund turns upon the interpretation of Section 6, Provident Funds Act, 1925, and the rules under which this fund is administered. The section, in so far as it is relevant, is in the following terms:

When the sum standing to the credit of any subscriber or depositor in any Government or Railway Provident Fund which is a contributory provident fund becomes payable, there may, if the authority specified in this behalf in the rules of the fund so directs, be deducted therefrom and paid to the Government or the Railway Administration as the case may be,... where the subscriber or depositor has been dismissed from his employment for any reasons specified in this behalf in the rules of the fund... the whole or any part of the amount of any such contributions (made by the employer).

4. u/s 8 of the Act the Provincial Government is entitled to extend the provisions of the Act to local authorities and it appears from the District Board Manual that these provisions have been so extended to District Boards. The rules of the fund are described as regulations and are appended to the Rules made by the Provincial Government regarding officers and servants of district boards printed in chap. III at p. 149 of the District Board Manual. Rule 10 says: "In regard to provident funds the board shall observe the regulations attached to these rules." Then follow the regulations of which the ninth is:

If a servant is dismissed the board... may with the sanction of the Commissioner withhold all or any part of the contribution made by it to his account with the

interest accrued thereon and pay to the servant only the balance to his credit without such contribution or the interest thereon....

5. The argument accepted by the learned Judge of the Court below was that this rule went far beyond the scope of Section 6, Provident Funds Act, 1925, in that it authorised confiscation or forfeiture of the whole of the board''s contribution in all cases of dismissal without any specification and was consequently ultra vires of the Provincial Government. The argument does not appeal to me. In the strict sense of the term the rule-cannot be ultra vires. u/s 172, District Boards Act, 1922, the Provincial Government may make rules, consistent with the Act, generally for the guidance of a Board in any matter connected with carrying out of the provisions of the Act. There is in Section 86 a provision for the establishment, and maintenance of provident funds. It is-not suggested that the rule is in any way inconsistent with the Act and there is no other way in which the discretion of the Provincial Government is fettered. The Provident Funds Act, 1925, does not purport to say what rules may or may not be made for the conduct of a Provident Fund. The real argument then, I suppose, is not that, the rule is ultra vires but that it fails to'' achieve its object because it does not specify the reasons for dismissal which justify for feiture. The assumption seems to be that a rule which stated that every reason for dismissal would also be a reason for forfeiture would not specify reasons for forfeiture at all within the meaning of Section 6 of the Act. If it were necessary to go to that length I should very much doubt the validity of this assumption. ''Specify'' means only ''make definite'' and there could surely be nothing more definite than a rule which stated that every reason for dismissal would also be a reason for forfeiture. The Provident Funds Act leaves it entirely to the rules of each fund to decide which reasons for dismissal shall justify forfeiture and the only object seems to be that subscribers and depositors should know in what circumstances they are liable to lose the contributions made by their employers.

6. It seems to me that Section 6 requires only that there should be no forfeiture in any circumstances unless the subscriber or depositor had ground for knowing from the rules that he would be liable in those circumstances to lose his employer''s contributions. In the present case, however, I do not think it is necessary to stress this aspect of the matter. Even if it is taken that the term ''specify'' implies some distinction between the special and the general or the species and the genus so that no rule would be valid unless it stated that some and not all reasons for dismissal would justify forfeiture I think that the rule with which we are dealing, if properly interpreted, would not be open to objection. The term ''dismissed from employment'' in Section 6 of the Provident Funds Act, 1925, is presumably used in its ordinary wide and general sense as equivalent to ''sent away'' or ''released from service'' because there is nothing to suggest that it is used in any special or restricted sense. If that is so, a dismissal would include any case in which the employer terminated the employment for any reason as, for instance, on the ground of retrenchment. On the other hand the term ''dismissed '' seems to me to

be used in a narrower sense in Regulation 9. The regulations are attached to the rules and I think it is in accordance with the canons of interpretation that terms used in them should have the same meaning as they have in the rules unless there is something repugnant in the subject or context. Rule 3 is in the following terms:

No officer or servant shall be dismissed without a reasonable opportunity being given him of being heard in his own defence. Any written defence tendered shall be recorded and a written order shall be passed thereon. Every order of dismissal or order confirming a dismissal shall be in writing and shall specify the charge brought, the defence and the reason for the order.

Note. - This rule shall not apply to cases in which a board discharges an officer or servant for some other reason than a fault committed by him.

In my judgment it is a fair inference that Regulation 9, when it speaks of a servant being dismissed, refers to a dismissal u/s 3 that is a dismissal for some misconduct or dereliction of duty which is capable of being the subject of a charge, a defence, an inquiry and a finding. If that is so, Regulation 9 says that forfeiture is justified not in all cases of dismissal within the meaning of Section 6 of the Provident Funds Act, 1925, but only in cases of dismissal on the ground of some misconduct or dereliction -of duty within the meaning of Rule 3 of the Rules made by the Provincial Government foe servants of the board, and is not open to the objection that it does not specify some of the possible reasons for dismissal in the wider sense which would justify forfeiture. It is our duty to give effect to the intentions of the rule-making authority and not to sit in judgment on the propriety of the rules although, speaking for myself, I can see nothing improper or unfair in depriving a servant of contributions made by a board if he has been guilty of misconduct or dereliction of duty. The Provident Funds Act, 1925, did not of itself apply to this fund. It was the Provincial Government which made the Act applicable and it was the Provincial Government which made the rules of the fund. This is not a case in which it can be suggested that the Provincial Government was attempting to evade restrictions imposed upon it by some outside authority. The restrictions, such as they are, were imposed by itself and, as I have already said, the Act does not say what the nature of the rule should be, provided that the subscriber or depositor has reasonable notice that the board''s contributions are liable to be withheld in certain circumstances. In this case nobody who read the rules could have any doubt that a servant dismissed under Rule 3 would be liable to lose the board''s contributions. When the Provincial Government was entitled to make a rule about forfeiture and when it made such a rule clearly intending that there might be forfeiture in certain circumstances I think we should interpret the rule so as to carry out that intention rather than cast about for reasons to render it completely nugatory. I would, therefore, hold that the resolution of the board was valid.

7. There remains the question whether the Court below in its discretion should have passed a decree granting an injunction and nothing more. In order to answer this

question, it is necessary to consider the nature of the fund and some of the rules for its administration. Every servant whose salary is not less than Rs. 20 a month is required to subscribe 6 1/4 per cent, of his salary to the fund and the board must contribute not less than one half nor more than the whole of the amount so subscribed. The board is required to keep a ledger showing the amount subscribed by each servant each month and the amount contributed by the board in his account. The whole amount subscribed by all the servants of the Board and contributed by the board itself must be placed in one savings bank account although a certain proportion of the amount in deposit may from time to time be withdrawn and invested in Government securities or placed in fixed deposit in the Imperial Bank. Separate savings bank accounts are not opened in the names of individual subscribers. When a depositor leaves the service his account is closed and if the amount to his credit is not withdrawn within a certain period, the account is written off as a dead account. When that happens the amount due to the subscriber is withdrawn from the savings bank and credited to the board as part of its general revenues. However, if the amount is subsequently claimed it is paid. In the same way if any amount is withheld under Rule 9 it is withdrawn and credited to the "general revenues of the board. It is clear that the board is entitled to operate the savings bank account and that the withdrawal of any sum from that account would not affect a claim for payment, if established.

8. Learned Counsel for the respondent has argued that the issue of the injunction was justified because the provident fund is held by the board in trust for its servants. He has relied upon the case in AIR 1937 261 (Privy Council) . It was held in that case that money paid into a fund by a company by way of bonus for ultimate distribution among its employees on certain conditions on the expiry of their employment was held in trust by the company. I doubt whether this case is authority for the proposition that money credited to provident funds to which the Provident Funds Act, 1925, applies is necessarily held in trust, but it seems to me that it is unnecessary to decide the question in this case On examination it appears that the real difficulty is due to the fact that the injunction is vague and ambiguous The Board is enjoined not to carry out or give effect to its resolution that its contribution to the provident fund should be forfeited hut what exactly does this mean and what exactly is it that the Board mint not do? The argument on the basis of the alleged trust seems to assume that the Board is restrained from withdrawing the money from the savings bank. If that is so the injunction should not have been granted because it was useless. The Board stated in its written statement (para. 14) dated 31st March 1941, that the amount had already been credited to the general funds of the Board in its budget for 1940-41. The allegation was not investigated and no attempt was made to show that an injunction restraining the Board from withdrawing the amount from the savings bank could have any effect. The reason probably was that it was not in-tended that that should be the effect of the injunction. The learned Judge says:

Under Section 54, Specific Relief Act, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant (plaintiff) whether expressly or by necessary implication. As in Section 3 of the Act, obligation includes every duty enforceable by law. In the ordinary course of things the Fund would be payable to the plaintiff on his ceasing to be a servant of the Board. u/s 4, Provident Funds Act, 19[XIX] of 1925, it was then the duty of the Board to pay it over to the plaintiff and this duty could be enforced by law. Section 54 further provides in para. 3 of the same that when the defendant-invades or threatens to invade the plaintiff''s right to property the Court may grant a perpetual injunction in the following, among other cases, namely (a) where the defendant is a trustee of that property for the plaintiff... Section 56(1) provides that, an injunction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceedings except in cases of breach of trust.

9. Although the learned Judge expressed his injunction in a negative form he appears really to have been contemplating a mandatory injunction that the Board should pay to the plaintiff the full amount to his credit in the Board''s ledger. His reasoning; is based on the alleged necessity to enforce the Board''s obligation to pay. I do not think it has ever been contemplated that a mandatory injunction to pay a sum of money should take the place of a decree for money, a decree which in the present case could not have been sought, the respondent''s contention being that the money was not payable because he had not been properly dismissed. Learned Counsel on his behalf explained in the course of arguments that the reason why the suit was instituted in this form was that the respondent could not claim the money because he did not admit that it was immediately payable. If the injunction does not require the Board to pay the money of what value is it? To get his money the respondent will have to sue again. No person can be allowed to sue for a useless injunction merely in order to obtain a finding on a disputed question in the hope that the other party will ultimately act upon that finding. In such circumstances, if he can get no other relief he should at least ask for a declaration. The respondent did not ask for a declaration and could not have done so without giving the statutory notice. Incidentally, it does not appear how the object of this vague injunction could have been defeated by the giving of notice. An injunction is a preventive relief which is designed to prevent a person from doing what he should not have done or, if necessary, to make him undo what he should not have done. It is not designed to make him do something which he ought to have done but has failed to do. It would not apply to a failure to make payment. It is not shown that an injunction could have been effective to prevent a withdrawal from the savings bank and a mandatory injunction to make repayment to the savings bank could not have been so urgent that the plaintiff could have been absolved from his liability to give notice under the statute. In my judgment the injunction should not have been granted and I would allow the appeal and dismiss the suit with costs throughout.

Mathur, J.

10. I have had the advantage of perusing the judgment of my learned brother in this case, but unfortunately, I do not find myself in agreement with him and, with due deference to his opinion, I would dismiss this appeal with costs. It would appear that the respondent, Kailash Nath Kapur, was the Secretary of the District Board of Shahjahanpur since the year 1924. On 29th January 1940 the Board dismissed him from its service and his appeal to the Government was rejected. More than a year after the order of dismissal was passed on 16th February 1941, the Board passed an ordinary resolution that the contributions made by the Board to the respondent''s provident fund together with interest on the same, should be forfeited. Thereupon Kailash Nath Kapur, respondent, brought a suit, No. 4 of 1941, in the Court of the Civil : Judge of Shahjahanpur, praying that an 1 injunction be granted restraining the defendant from carrying out or giving effect to the resolution dated 16th February 1941 of the District Board forfeiting to the Board the amount of the provident fund with interest contributed by the Board towards the provident fund of the plaintiff. A number lot pleas were raised on behalf of the defendant, but the main points in issue were whether the resolution of the defendant Board dated 16th February 1941 forfeiting to the Board its contribution to the plaintiff''s provident fund was illegal, ultra vires and ineffectual, and whether a relief for injunction was the proper remedy and whether under the circumstances of the case it could have been granted. On both these points the learned Civil Judge held in favour of the plaintiff-respondent and decreed the suit with costs. The District Board, Shahjahanpur, has come in appeal.

11. It has been argued on behalf of the plaintiff-respondent, that the District Board was a trustee for the money of the Provident fund, in its hand, and could not appropriate the money or make any use of it unless so authorised by the statute. Reliance has been placed on the case in AIR 1937 261 (Privy Council) . In my view this case supports the principle propounded by the learned Counsel for the respondent. Section 6(b), Provident Funds Act, Act 19 [XIX] of 1925, gives the employer a power to deduct the whole or any part of the contributions made. It must, however, be remembered that this power has to be exercised strictly in accordance with these provisions. Section 6, Clause (b), so far as it is relevant to our purpose, runs thus:

When the sum standing to the credit of any subscriber or depositor in any Government or Railway Provident Fund which is a contributory Provident Fond becomes payable, there may, if the authority (specified in this behalf in the rules of the Fund) so directs, be deducted therefrom and paid to Government or the Railway Administration, as the case may be.

(b) Where the subscriber or depositor has been dismissed from his employment for any reasons specified in this behalf in the rules of the Fund, or where he has resigned such employment within five years of the commencement thereof, the whole or any part of the amount of any such contributions, interest and increment.

12. It may be mentioned here that u/s 8, Provident Funds Act, it has been made applicable by the Provincial Government to the District Boards. It has to be seen whether the District Board, in the present case, while forfeiting its contribution to the Provident Fund, acted in strict compliance with Section 6(b), Provident Funds Act, or not. If its action was not in strict compliance with this section, I have no doubt in my mind that it would be without jurisdiction and could not be upheld. u/s 172, District Boards Act, Act 10 [X] of 1922, power has been given to the Local Government to make rules consistent with the Act, among other things, generally for the guidance of a Board or any committee of a Board or any Government officer in any matter connected with the carrying out of the provisions of this Act Acting under this provision of the District Boards Act the Local Government made certain rules regarding officers and servants of District Boards and officers and servants of Government lent to District Boards which are found in chap. 3, District Boards Manual. In the course of these rules the Government also framed Provident Fund Regulations which are found as Regns. 1 to 18 printed after Rule 10 which says: "In regard to provident funds the board shall observe the regulations attached to these rules." u/s 173, District Boards Act, the Board itself has power to make regulations consistent with this Act and with any rule, and with any regulation made by the Local Government under Sub-section (2) as to a number of matters in which there is a heading (k) which says:
the payment of contributions, at such rates and subject to such conditions as may be prescribed in such regulations, to a pension or Provident Fund established by the board, or with the approval of the board, by the said servants.

13. It is a matter of admission that no rules regarding the Provident Fund were made by the Board itself and so we have to fall back upon the regulations made by the Government. Regulation 9 lays down:

If a servant is dismissed, the board or the education committee may with the sanction of the Commissioner withhold all or any part of the contribution made by it to his account with the interest accrued thereon, and pay to the servant only the balance at his credit without such contribution and the interest thereon....

14. The objection of the plaintiff respondent was that this regulation was not sufficient to empower the Board to withhold the contribution as it was not in strict compliance with Section 6(b), Provident Funds Act, which clearly lays down that such withholding can only be made where the subscriber or depositor has been dismissed from his employment for any reasons specified in this behalf in the rules of the Fund. It is obvious that in Regn. 9 no reasons have been specified. My learned brother is of opinion that the word ''specify'' means only ''make definite'' and that

there could surely be nothing more definite than a rule which stated that every reason for dismissal would also be a reason for forfeiture.

With respect, I must point out that to lay down such a proposition would be to defeat all safeguards which the statute has provided in this respect. I find that in Chamber''s Twentieth Century Dictionary the meaning of the word ''specify'' is given as ''to mention particularly,'' and therefore where it is vaguely stated that every reason for dismissal would be a reason for forfeiture and where no particular reason is mentioned it would not be correct. The words used in the statute, I repeat them again, are, "for any reasons specified in this behalf in the rules of the Fund" according to which the reasons must be specified and they must be specified in the rules of the Fund. My learned brother has then sought guidance from Rule 3 which lays down:

No officer or servant shall be dismissed without a reasonable opportunity being given him of being heard in his own defence. Any written defence tendered shall be recorded and a written order shall be passed thereon. Every order of dismissal or order confirming a dismissal shall be in writing and shall specify the charge brought, the defence and reasons for the order.

Note. - This rule shall not apply to cases in which a board discharges an officer or servant for some other reasons than a fault committed by him.

15. He deduces from this that the word ''dismissal'' in Regn. 9 refers to a dismissal under Rule 3, that is, a dismissal for some misconduct or dereliction of duty which is cap. able of being the subject of a charge, a defence, an inquiry and a finding, and therefore he thinks that the word ''dismissal'' in itself is sufficient to hold that it is a dismissal for reasons specified in Rule 3. I have not been able to find out any rule of construction by which Rule 3 could be read as part of the Provident Fund Regulations, which are independent by themselves and are 18 in number. The fact, that these regulations have been incorporated in a set of rules relating to other matters would not, in my humble opinion, justify that they should be read subject to those rules. Even if it be permissible to read Rule 3 into the Provident Fund Regulations, I would respectfully point out that it is not possible to arrive at the conclusion mentioned above. Rule 3 only lays down the procedure to be followed in the case of a dismissal. It does not mention the reason or reasons for which a dismissal can be effected. The note only says that if a Board discharges an officer or servant for some other reason than a fault committed by him, the said procedure shall not apply. In my humble opinion, it will be too much to read in this rule that a Board cannot dismiss anybody except for a fault committed by him. I think I am relieved from the duty of hunting for a definition of the word ''dismissal'' on account of a rule made by the District Board itself u/s 172, District Boards Act, which finds a place at page 162, District Board Manual, Edn. 3. It says:
The removal of a secretary from the post of secretary without his written consent is a dismissal within the meaning of Section 71 of the Act, whether the secretary is thereby removed from the board''s service or is transferred to another post in the board''s service.

16. This makes it beyond any dispute that the words in Regn. 9 "if a servant is dismissed" mean with relation to a secretary, "if a secretary is removed from his office without his consent" and no more. So Regulation 9 would be absolutely repugnant to Section 6(b), Provident Funds Act, and would empower the Board instead of forfeiting the contributions to the provident fund in the case of a dismissal for any reasons specified in this behalf in the rules, to forfeit them in any case in which the secretary is removed without his written consent. I am thus clearly of opinion that the resolution of the District Board was in definance of Section 6(b), Provident Funds Act, and was with, tout jurisdiction. I perfectly agree that it is the duty of the Court to give effect to the intentions of the rule-making authority, but those intentions must appear from the rules themselves. I do not think it is a part of the duty of the Court to start with a presumption that every rule has been validly made. The forfeiture of any part of the provident fund contribution, apart from the fact that it is a breach of trust, is a very serious matter. It is very difficult for any person to be a fair judge in his own case, and if no safeguards were provided then in very case, in which an employer would dismiss a servant, he would be tempted to deprive him of his provident fund contribution. In this connection it would be interesting to note the resolution of the Board dated 16th February 1941 which discloses the real motive for the forfeiture. It runs thus:
Report of the Chairman District Board to the effect that as Babu Kailash Nath Kapoor has been dismissed from the Board''s service and his appeal too has been rejected by the Governor Besides this the Criminal Court has also decided in the case of S. Indar Singh and others that Babu Kailash Nath was at the bottom of the case and the Board had to pay huge amount for the officiating allowances in the officiating arrangements. In view of the above the amount of Provident Fund paid by the Board along with the interest be forfeited.

17. This would amount to adding a further ground for forfeiting the contributions to the provident fund besides those laid down in Section 6, Provident Funds Act. It has also been argued and accepted by my learned brother, that since it was in the power of the Local Government alone to apply the Provident Funds Act to the District Board and it was the Provincial Government which made the rules of the fund, it could not be suggested that the Government was attempting to evade restrictions imposed upon it by some outside authority. With due respect, I must say that there is no question of evasion. It is a question of failure to comply with the provisions of Section 6(b), Provident Funds Act. It is true that it was open to the Provincial Government not to apply this Act to the District Board, but I very much doubt that when they have once done so, they can now go back and say that they do not propose to comply with its provisions. The result of all this discussion is that I feel perfectly certain that the contributions to the provident fund being a trust in the hands of the District Board, the Board cannot forfeit them unless in strict compliance with the provisions of Section 6(b), Provident Funds Act. Those provisions clearly lay down that the contributions can only be forfeited for reasons

specified in this behalf in the rules of the fund. There is no manner of doubt that the reasons have not been specified (particularly mentioned) in the rules of the fund, and one cannot, without going out of one''s way read Rule 3 to mean that ''dismissal'' means dismissal for a fault and that it amounts to specifying reasons. It, therefore, follows that the provisions of Section 6(b), Provident Funds Act, having not been complied with, the Board had no power to forfeit the contributions and the resolution passed by it was ultra vires and without jurisdiction on that account. I perfectly agree with the judgment of the lower Court on that point and would uphold it.

18. The next point appears to be equally ticklish. It has been argned that in the circumstances of the case no injunction could have been issued and none should have been issued. I have given the matter my best consideration and I think the only remedy open to the plaintiff was to seek an injunction. It has been argued that the plaintiff has avoided the necessity of serving the Board with a notice by giving that form to the suit and 4ie should have, as a matter of fact, sued either to seek a declaration or for payment of the money to him. I am not in a position to say that the plaintiff is not entitled to seek a relief because another and more effective relief is available to him. I think, however, that in this case there was sufficient justification for the plaintiff in not bringing a suit for payment of money. He still asserts-and I am told a suit is pending to have that point decided-that he has not been properly dismissed and he is in the service of the Board. In these circumstances he could not claim the return of the provident fund money and if he did it would have meant that he admitted his dismissal and that might have led to the dismissal of the other suit. If he had brought a suit for declaration it would have been necessary to serve the Board with a two months notice. In that case the Board could have withdrawn the money from the Savings Bank and could have further complicated the matters. The suit was filed on 11th March 1941 and when a written statement was filed on behalf of the Board on 31st March 1941 all that the Board could say in para. 14 of the written statement was
that the said resolution of forfeiture of provident fund has already been carried out and the forfeited amount has already been shown as income of the Board in the revised budget of 1940-1941.

It seems clear to me from this that the money was not withdrawn till then, but it was only shown as an expected income in the revised budget of 1940-1941. On these grounds I think the injunction was a proper remedy for the plaintiff to seek. I further agree with the learned Civil Judge that Section 54, Specific Belief Act, expressly provides for such a case. Among other things the said section lays down:

When the defendant invades or threatens to invade the plaintiff''s right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following case:

(a) where the defendant is trustee of the property for the plaintiff;

* * * *

(b) Where the injunction is necessary to prevent a multiplicity of judicial proceedings.

19. There can be no manner of doubt that by this resolution the right of the plaintiff to that part of the provident fund which has been forfeited has not only been threatened but has been invaded by the defendant and the defendant being a trustee Section 54 of the Act would be applicable. I am also of opinion that it would also prevent a multiplicity of judicial proceedings because once an injunction is given the parties would revert to their original position and the money would be available to the plaintiff as if no order of forfeiture was passed. I must again advert to the fact that under the circumstances of the case the plaintiff was not in a position to claim the money and no mandatory injunction could be passed. I do not think that there is any vagueness or indefiniteness about the injunction. The Board would be bound to stay its hand, the money would be allowed to remain in the Savings Bank at the credit of the plaintiff and no suit for payment of the money would be ultimately necessary. I am not impressed* by the argument that if the defendant withdraws the money the plaintiff would again be driven to bring a suit to recover it. There is always a possibility of evasion or disobedience of an order of injunction, but that is no good ground for not granting an injunction. In my opinion this is a fit case in which the judgment of the lower Court should be upheld and the appeal should be dismissed. I would, therefore, dismiss the appeal with costs and maintain the decree of the lower Court.
20. As we have disagreed we direct that the following points be referred to a third Judge, namely:

1. Whether the District Board was debarred by Section 6(b), Provident Funds Act, or otherwise from withholding its contribution to the provident fund?

2. Whether the Court in exercise of its discretion could grant the injunction claimed on the facts stated by the plaintiff?

3. Whether the injunction sought was in effect such that the suit could be instituted, without statutory notice?

Dar, J.

21. This is a reference to me u/s 27 of the Letters Patent of the following three questions of law which have arisen in?, the above first appeal and upon which the Judges hearing the appeal have expressed, differing opinions:

1. Whether the District Board was debarred by Section 6(b), Provident Funds Act, or otherwise from withholding its contribution to the Provident Fund?

2. Whether the Court in exercise of its discretion could grant the injunction claimed on the facts-stated by the plaintiff?

3. Whether the injunction sought was in effect, such that the suit could be instituted without statutory notice?

22. For a number of years the respondent, Kailash Nath Kapoor was employed" as a secretary of the appellant, the District Boards Shahjahanpur. On 29th January 1940 by a resolution of the Board he was dismissed from service and his appeal against the dismissal was disallowed by the Government on 19th December 1940. On 16th February 1941 the Board passed a fresh resolution forfeiting Board''s contribution to the provident fund of the secretary which was a sum of about Rs. 5484-5-0 and this resolution, of the Board received the sanction of the Commissioner on 11th March 1941. On the same date Kailashi Nath Kapoor raised an action in the Court of the Civil Judge of Shahjahanpur alleging that the act of forfeiture was wholly unauthorised and praying that

an injunction be granted restraining the defendant from carrying out or giving effect to the resolution dated 16th February 1941 of the District Board forfeiting to the Board the amount of the Provident Fund with interest contributed by the Board towards the Provident Fund of the plaintiff.

23. The questions referred to me relate to the authority of the Board to forfeit its own contribution to the provident fund of an employee and to the form of the action which was open to the employee to seek relief against this forfeiture. The authority of the Board to forfeit its contribution to the provident fund is derived from Section 6(b), Provident Funds Act (19 [XIX] of 1925) and it rests upon certain Rules and Regulations made by the Provincial Government for dismissal of municipal employees and for administration of their provident fund. The relevant portion of Section 6(b), Provident Funds Act, and Section 9, Provident Fund Regulations made by the Provincial Government are as follows:

Section 6:

When the sum standing to the credit of any subscriber or depositor in any Government or Railway Provident Fund which is a contributory Provident Fund becomes payable, there may, if the authority specified in this behalf in the Rules of the Fund so directs, be deducted therefrom and paid to Government or the Railway administration, as the case may be.

Section 6(b):

Where the subscriber or depositor has been dismissed from his employment for any reasons specified in this behalf in the rules of the Fund, or where he has resigned such employment within five years of the commencement thereof, the whole or any part of the amount of any such contributions, interest and increment.

Provident Fund Regulations, Section 9:

If a servant is dismissed, the board or the education committee may with the sanction of the Commissioner withhold all or any part of the contribution made by it to his account with the interest accrued thereon, and pay to the servant only the balance at his credit without such contribution and the interest thereon. The balance above referred to is not liable to forfeiture on dismissal or on conviction by a criminal Court, except for an offence for which the penalty of forfeiture of the whole of the offender''s property is prescribed by law.

24. u/s 8, Provident Funds Act, power is given to the appropriate Government to apply the Act to Provident Funds other than Government or Railway provident fund and it is a matter of admission in this case that the Provident Funds Act has been made applicable to the provident fund which was constituted by the District Board of Shahjahanpur for the benefit of its employees including Kailashi Nath Kapoor, the secretary. It is also a matter of admission that the Board although it has power to do so has not made any rules and regulations for the establishment and administration of the provident fund and the rules and regulations for that purpose were made by the Provincial Government in exercise of rule-making powers vested in them. Section 6(b) Provident Funds Act, enacts that

Where the subscriber or depositor has been dismissed from his employment for any reasons specified in this behalf in the rules of the Fund

the authority constituting the fund may forfeit the contribution which it has made to the provident fund for the benefit of the subscriber or depositor. It is agreed that the Board or the Provincial Government acting for it in making rules and regulations were bound to set out in the rules and regulations the reasons of dismissal which would entail forfeiture, but it is contended that the specification of the reasons need go no further than this that all dismissals or every dismissal will entail a forfeiture or every reason for dismissal is also a reason for forfeiture. It is agreed and it is also obvious that the word dismissal in Clause (b) of Section 6 is used in its wider sense so as to include termination of employment for retrenchment, for misfortune arising out of incurable disease and for other causes which imply no fault of the employee. One of the meanings given to the word ''dismiss'' in Murray''s New English Dictionary, 1897 Edition is as follows: "To spend away or remove from office, employment, position; discharge, discard, expel." When a statute enacts that a dismissal from employment for any reasons specified in this behalf in the Rules shall entail a forfeiture it necessarily implies that all dismissals shall not entail a forfeiture but only some dismissals would entail a forfeiture. The statute therefore casts a burden upon the constituting authority of the fund to particularise the dismissal which would entail forfeiture so as to distinguish it from the other dismissal which would not lead to that result. It is also obvious that the statute contemplates that the reason should be specified in the Rules so that the employee should know during his employment and at the time when the fund comes into existence the risk

of the liability of forfeiture which he runs in committing acts which entail forfeiture so as not to commit them and it is not left to the constituting authority of the fund to determine the reasons of forfeiture subsequently when according to its opinion some act is committed by the subscriber or depositor which should entail forfeiture.

25. Section 9, Provident Fund Regulations, made by the Government enacts that if a servant is dismissed the Board can forfeit its contribution to the provident fund. Prima facie the word ''dismissal'' here is used in the same wide sense as in the Provident Funds Act and includes termination of employment for any cause whatever. The section, therefore, in substance enacts that every dismissal will entail forfeiture and, in my opinion, such an enactment is against the spirit and terms of, Section 6(b), Provident Funds Act, and is unauthorised. But it is contended that the word ''dismissal'' in Section 9 of the Regulations is used in a narrower sense namely a dismissal for fault and if this be the meaning which could be given to the word the enactment particularises a dismissal which would entail forfeiture and thus satisfies the conditions of the statute. It is contended that the Provident Fund Regulations made by the Government are part and parcel of the eleven Rules made by the Government regarding officers and servants of the District Board and officers and servants of the Government lent to the District Board. The 10th Rule of these rules provides that in regard to the provident funds the Board shall observe the regulations attached to these Rules which include Section 9 which I have quoted above and Rule 3 of the above Rules is in the following words:

No officer or servant shall be dismissed without reasonable opportunity being given him of being heard in his own defence. Any written defence tendered shall be recorded and a written order shall be passed thereon. Every order of dismissal or order confirming a dismissal shall be in writing and shall specify the charge brought, the defence and reasons for the order.

Note: - This rule shall not apply to cases in which a board discharges an officer or servant for some other reason than a fault committed by him.

26. The word ''dismissal'' has nowhere been denned either in the District Boards Act or in the Rules and Regulations made thereunder by the Government. Section 71, District Boards Act, 1922. provides for the punishment or dismissal of the secretary and here the word ''dismissal'' is obviously used in a very wide sense and the Government has further widened its scope by enacting a Rule which provides that dismissal would mean any removal without consent from the post even when services are retained on another post and the abolition is due to retrenchment and the provisions of Section 71 would apply not only to the secretary but to several other officers and employees of the Board specified in the Rules. In Rule 3 quoted above also the word ''dismissal'' is used in its wide sense but by a note added to the Rule its effect is restricted to dismissals for fault and for the purpose of Rule 3 it may be conceded that ''dismissal'' has a narrower meaning, namely the termination of employment of an officer or servant of the Board for a fault. It may be a sound rule

of construction to give the same meaning to the same word occurring in different parts of a statute or even in different parts of Rules and Regulations made in the statute, but it is quite possible, however,

If sufficient reason can be assigned to construe a word in one part of an Act in a different sense from that which bears in another part of the Act: see judgment of Sir G. J. Turner L.J. in In re National Savings Bank Association (1866) 1 Ch.A. 547

27. Here we are dealing with a word which is used in its wider sense both in Section 71 and in Rule 8 and in Section 9 of Regulations but whose meaning is still further widened by the Rules framed u/s 71 and restricted by a note attached to Rule 3. There is no rule of construction which justifies in circumstances like these that the restriction which applies to the meaning of the word by reason of the note attached to the Rule 3 which rule was enacted with one object in view should be imported to Section 9 of the Regulation which was enacted with a very different object in view, and there is no valid reason to hold that the word ''dismissal'' in Section 9 of Regulations is used in the same sense in which the word is used in Rule 8 subject to the restriction of the note contained in the Rule and consequently does not mean dismissal in its wider sense but only dismissal for a fault. It follows that the Rules made by the constituting authority of the fund do not comply with the conditions laid down in the Provident Funds Act and there is no authority in the Board to forfeit its contribution to the fund. In this view of the matter, it is not necessary to express any opinion on the larger question that if the word ''dismissal'' in Section 9 of the Regulations were taken to mean dismissal for fault whether this would or would not be a sufficient compliance of the conditions laid down in Section 6(b). Provident Funds Act. It is possible that the particularisation of the reasons for dismissal which might entail forfeiture contemplated by Section 6(b) was intended to be more definite than a mere statement that all dismissal for fault may entail forfeiture, but in the view which I have taken of the case it is not necessary to express any opinion on this question.

28. Section 54, Specific Relief Act, permits the grant of an injunction to prevent the breach of an obligation existing in favour of the plaintiff and in cases where the defendant invades or threatens to invade the plaintiff''s right to or enjoyment of property it permits the grant of an injunction where the defendant is trustee of the property or where the injunction is necessary to prevent multiplicity of judicial proceedings. The provident fund of the secretary consisted of two contributions, one made by him and the other made by the board. His own contribution undoubtedly was a trust money in the hands of the District Board and it is also permissible to take the view that the District Board''s contribution also was subject to a trust. If the contribution of the Board could not be validly forfeited then undoubtedly there existed an obligation in favour of the secretary against the Board to return the deposit. The resolution of the Board also was prima facie an invasion or [threat to invade the plaintiff''s rights in the deposit and an injunction at this

stage might obviate the necessity of bringing an action for recovery of money later on or for other reliefs. The case, therefore, fulfils the requirements of Section 54, Specific Relief Act. It cannot be disputed that if in the course of employment, a master threatens to forfeit the provident fund of a servant, an action will lie to restrain the forfeiture and this action may be raised without giving any notice, if by reason of delay in serving the notice there is a danger of the forfeiture being carried out. It also cannot be disputed that if after termination of service the master threatens to forfeit the provident fund, the servant''s remedy is to bring an action for recovery of money. The problem in the case is that when a dismissal has taken place in fact but is challenged by the servant and there is a further threat to the forfeiture of provident fund whether an action for injunction will lie or not. And further whether the purpose of injunction will be defeated or not by giving a statutory notice to the master.

29. Apart from cases where the remedy of servant for wrongful dismissal lies in damages and apart from cases where dismissal has become a settled fact and any challenge by the servant of his dismissal cannot be regarded bona fide, it should be open to a servant to take the position that his dismissal was wrongful and to seek relief on that footing. The appointment and dismissal of a secretary of the District Board is a matter of statutory provision. If the secretary is dismissed from his post in utter disregard of statutory provisions, then it is open to the secretary to seek a declaration that he was wrongfully dismissed and he is still in employment. And so long as it is open to him to seek a declaration about his wrongful dismissal it is also open to him to seek an injunction if after dismissal his provident fund is threatened. The secretary in this case was dismissed by the Board on 29th January 1940, his appeal was dismissed by the Government on 19th December 1940. The Board passed the resolution to forfeit his fund on 16th February 1941. He raised an action for an injunction which has given rise to this appeal on 1st March 1941 and on the same day the Commissioner accorded his sanction to forfeiture. On 16th August 1941, he raised an action about his wrongful dismissal Having regard to the position which the secretary had taken about his dismissal on the date when the action for injunction was raised, not only was it a proper action, but in my opinion, it was the only action available to him, and if he had delayed the action by serving the statutory notice, the Commissioner''s sanction might have come into operation and the provident fund might have been diverted to other uses and the whole object of injunction might have been defeated. For the reasons given above I would answer all the three questions referred to me in the affirmative.

Allsop and Mathur, JJ.

30. In accordance with the opinion of the majority of the Court the appeal is dismissed with costs.