

(1951) 12 AHC CK 0009

Allahabad High Court

Case No: Civil Revision No. 98 of 1946

Dargahi Lal Nigam

APPELLANT

Vs

Cawnpore Municipal Board

RESPONDENT

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**Date of Decision:** Dec. 11, 1951**Acts Referred:**

- Uttar Pradesh Municipalities Act, 1916 - Section 326, 57, 66, 68, 70

**Citation:** AIR 1952 All 382 : (1952) 22 AWR 259**Hon'ble Judges:** Malik, C.J; V. Bhargava, J; Brij Mohan Lall, J**Bench:** Full Bench**Advocate:** Shambhu Prasad, for the Appellant; Lachmi Saran, for the Respondent**Final Decision:** Dismissed

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### Judgement

Malik, C.J.

The plaintiff was an employee of the Municipal Board. He was appointed by the Municipal Board in the grade of Rs. 30-2 50 on an initial salary of Rs. 40 on 17 6-1931. On 16-6-1932, he was confirmed in his post and the duties assigned to him were to look after the cases in Courts of law on behalf of the Board. In June 1936 he was drawing a salary of Rs. 50 which salary he continued to draw till 2-9-1941, when he was suspended on certain charges. On 4-1-1943, he was acquitted of one charge and on 1-1-1943, he was discharged of the other charge. On 7-3-1943, he was reinstated but the Commissioner raised certain objections and ultimately on 22-12-1943, the Board terminated his service and dismissed him. The plaintiff filed a suit on 22-12-1944, claiming that, on his reinstatement in 1943 he became entitled to get his full salary for the period during which he was under suspension i.e. from 2-9-1941 to 7-3-1943. The suit was brought against the Kanpur Municipal Board through its Chairman.

2. The Board took various objections. One of the pleas raised on behalf of the Board was that the suit was barred by limitation. The provision relied on by the Board was

Section 326, D. P. Municipalities Act (II [2] of 1916). The relevant portion of Section 326 is as follows :

"No suit shall be instituted against a board, or against a member, officer or servant of a Board, in respect of an act done or purporting to have been done in its ..... Official capacity, until the expiration of two months next after notice in writing has been, in the case of a board, left at its office,.... explicitly stating the cause of action, the nature of the relief sought, the amount of compensation claimed and the name and place of abode of the intending plaintiff ..... (2) ..... (3) No action such as is described in Sub-section (1) shall, unless it is an action for the recovery of immovable property or for a declaration of title thereto, be commenced otherwise than within six months next after the accrual of the cause of action."

3. The learned Judge of the Court of Small Causes held in favour of the Board on this point and also on another point that was raised on its behalf, and dismissed the suit.

4. A civil revision u/s 25 of the Court of Small Causes was filed in this Court which came up before a learned single Judge who referred it to a bench. The following question "whether the suit in the present case was governed by Section 326, U. P. Municipalities Act or by the Indian Limitation Act" was referred by the Bench to larger Bench for decision and that is the only point with which we are concerned. It is, therefore, not necessary for us to go into the question as to the date when the cause of action, if any, arose in the plaintiff's favour and whether he was at all entitled to claim his full salary during the period of suspension.

5. The point, therefore, for consideration is whether the refusal of the Board to pay to the plaintiff the whole of his salary during the period of his suspension was an act done in its official capacity and whether the suit is of the nature contemplated by the section.

6. As regards the first point, we may refer to Section 4 (2), U P. General Clauses Act which provides that words which refer to "acts done" extend also to "illegal omissions." It, therefore, follows that if the Board refused to make payment to its servant it had done "an act" The question is whether this act was done by it in its official capacity. Learned counsel has contended that this was not an act by the Board in its official capacity but it was merely its contractual obligation which the Board was required to fulfil when it was asked to pay to the plaintiff the whole of the salary due for the period during which he was under suspension. The argument is that Section 326, Municipalities Act applies to cases of torts and not to cases of contract and the Board was under no obligation under the Municipalities Act to appoint the plaintiff or to pay his full salary so that if no payment was made there was no breach of any statutory obligation but a breach merely of a contractual liability. In the North-Western Provinces and Oudh Municipalities Act (xv [15] of 1873) Section 43 provided that :

"No suit shall be brought against a Committee or any of their officers, or any person acting under their direction, for anything done under this Act. . . ."

This section was, however, amended and in the North Western Provinces and Oudh Municipalities Act (I [1] of 1900) the words in Section 49 were "any act purporting to be done in its or his official capacity. .."

The words to the same effect have been repeated in Section 326 of the present Act. An act, therefore, done or purporting to be done in the official capacity of the board or by a member or servant of the board is covered by the section. The section does not require that the act must in fact be done under the Act. Even if it purports to be done under the Act, the action covers it. The U. P. Municipalities Act provides for appointment of servants by the board. Certain special types of servants, the Executive Officers and others, are specifically dealt with, but Section 71 is the general section which give the right to a board to determine what servants are required for the discharge of the duties of the board and the salaries to be paid to them. Apart from those for whom special provision has been made by Sections 67, 66, 68 and 70 the Executive Officer has been given the power to appoint a servant drawing monthly salary not exceeding Rs. 40 or in a city RS. 50. The power of punishment and dismissal are provided for in Section 76 and Section 77 gives the Municipal Board power to make rules about appointment and dismissal of servants. It was in the exercise of the powers given under those sections that the Executive Officer must have appointed the plaintiff and passed the order of suspension and dismissal.

7. Learned counsel admits that the appointment of the plaintiff by the board was in the discharge of its official duties. This is obvious. The board had to perfo(sic) its official functions and for the discharge of its duties it needed the necessary staff. In appointing or suspending or dismissing the staff in accordance with the provisions of the Act and the rules thereunder the board or the Chairman or the Executive Officer must be deemed to be discharging their official functions. The argument, however, is that the withholding of a part of the salary was not in discharge of the board's duties but amounts to a breach of contract and that Section 326 applies merely to a case of tort and not to a case of contract. When the board appoints a servant it is for it to decide on what terms the servant shall be appointed, what salary he would get and, in case his work is found to be unsatisfactory, it must have power to award punishment. Generally rules and by-laws are made for the purpose and Section 77 gives the M unicipal Board power to make such rules. It is in the exeraise of the functions of the board, therefore, that it held that the applicant must be dismissed and that he was not entitled to get his full salary for the period during which he was under suspension. We fail to see how the withholding of the salary can be anything but an official act.

8. As regards the second contention that it is only a suit on tort that is contemplated by Section 326 no doubt there are observations in several judgments of this Court to

that effect. Learned Counsel has relied on the cases of the Municipal Board, *Agra v. Ram Kishan* 1933 ALJ 1414 *Bam Narain v. Municipal Board, Muttra* 1938 ALJ 894 and *Jaggan Nath v. Municipal Board, Soron* 1939 ALJ 168. In the cases cited by us above no special reason was given for holding that the section contemplated only an action in tort and not an action in contract. The reliance placed by learned counsel is on the words that in the notice given to the board the plaintiff must explicitly state the cause of action, the nature of relief sought, the amount of compensation claimed etc. It is said that the amount of compensation can be claimed only in a case of tort and not in any other type of action. Compensation or damage can, however, be claimed also in certain cases of breaches of contract. The fact that there is no basis for this submission is clear when we consider Sub-section (4) of Section 326. Sub-section (4) provides that :

"Nothing in Sub-section (1) shall be construed to apply to a suit wherein the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the commencement of the suit or proceeding."

The section, therefore, does contemplate a suit in which a plaintiff claims only a relief for an injunction and does not claim any amount as compensation. The words relied on by learned counsel obviously mean that, in case compensation is claimed, the plaintiff should mention the amount thereof so that the Municipal board might know what exactly is the amount of the claim and be able to decide whether it would not like to settle the claim out of Court. The point was carefully considered by a bench of this Court in *Munir Khan v. Municipal Board, Allahabad* 1930 ALJ 461 with whose opinion we respectfully agree. It was said :

"The plaintiff contends that the scope of Clause (1) is confined to suits for compensation for wrongful acts on the part of the Municipal Board or of its member, officer or servant and that the words "act done" should be construed as wrongful or tortious act sounding in damages. An examination of the language of Clause (1) does not lend itself to the interpretation which is sought to be put upon it. The clause provides that the notice must explicitly state the cause "of action, the nature of the relief sought and the amount of compensation claimed. The scope of the suits has not been confined to suits for damages founded upon tort. No limitation has been put either as to the nature of the cause of action or as to the nature of the relief claimed. Clause (4) clearly indicates that the relief claimed under Clause (1) may be one for an injunction..... The words "cause of action" are of sufficient amplitude to cover cases involving the infraction of an absolute right or of a right arising out of a contract and also of a right to compensation following from tort."

The observations of their Lordships of the Judicial Committee in *Revati Mohan v. Jatindra Mohan* LR 61 Ind. App. 171 are also helpful. In that case their Lordships said that:

"They do not suggest that a claim based upon a breach of contract by a public officer may not in many cases be sufficient to entitle him to notice under the section. . ."

No doubt that decision related to a case in which notice u/s 80, Civil P. C., had to be given but the language of Section 80 Civil P. C., and Section 326, Municipalities Act, so far as relevant to this matter are similar. In the case before their Lordships, a manager of the Court of Wards had borrowed money from a third person on a mortgage of his ward's property. In the mortgage deed it was clearly stipulated that the mortgagee's only remedy would be by a sale of the property mortgaged. The mortgagee filed a suit for sale on the basis of the mortgage without giving a notice u/s 80 Civil P. C. Their Lordships held that no notice u/s 80 was required as the suit was not with respect to any act purporting to be done by the manager. Their Lordships said that: "The manager for the time being no doubt had an option to pay in order to save the sale, but failure to exercise an option is not in any sense a breach of duty." The question here arises whether the failure of the board to pay does or does not amount to a breach of duty. Unless the amount is payable to the plaintiff by the board the plaintiff cannot get a decree for the amount. The plaintiff claims that the board was under an obligation to pay the amount to the plaintiff. The board was called upon to decide this matter, as it was in charge of public funds and it had to decide in the discharge of its official duty whether the amount was payable by it or not, and if it decided that amount was not payable by it then in view of Section 4 (2), U. P. General Clauses Act, the decision not to pay is "an act" done by the board in its official capacity. 9. The only decision in plaintiff's favour on the point is *District Board, Mainpuri v. Devendra Nath*, B. 1943 ALW 513 but the point was not urged there before the learned Judge and the decision is, therefore, not helpful. A contrary view has, however, been taken in the following cases : (1) *Banwari Lal v. Municipal Board, Cawnpore* 23 ALJ 23 AIR 1948 282 (Oudh)

10. Learned counsel has placed great reliance on the case of *District Board, Allahabad v. Behari Lal* 1935 ALJ 1214 That was a suit filed by a contractor for refund of a deposit made by him as security for the price of certain moram supplied and for payment of certain extra work done. It is not for us to consider whether on the facts of that case the Full Bench was right in holding that Section 192, District Boards Act, did not apply to the case. We must, however, mention with great respect that we have not been able to understand how reliance could be placed by the Bench on the decision of their Lordships of the Judicial Committee in *Revati Mohan Das*'s case LR 61 Ind. App. 171 in support of the view that Section 192, District Boards Act, did not apply to the facts of the case before the Full Bench.

11. The result, therefore, is that in our view the suit in the present case was governed by Section 326, Municipalities Act.

12. The case may now be sent back to the Bench for decision according to law.