

(1920) 06 CAL CK 0003

Calcutta High Court

Case No: None

Kamini Kumar Chandra the
Chairman of the Silchar
Municipality

APPELLANT

Vs

Rebati Raman Das

RESPONDENT

Date of Decision: June 1, 1920

Citation: AIR 1921 Cal 346 : 60 Ind. Cas. 756

Hon'ble Judges: Asutosh Mookerjee, Acting C.J.; Ernest Fletcher, J

Bench: Division Bench

Judgement

Asutosh Mookerjee, Actg. C.J.

1. This is an appeal by the Chairman of the Silchar Municipality in a suit instituted against the Municipality by the plaintiff for recovery of wages, The plaintiff accepted an appointment under the Commissioners on the 25th July 1895, and had variant ofibe3 from time to time, till ultimately he was appointed to be the Head Clerk and Accountant on a salary of Rs. 59 a month. While he held such appointment, he was suspended on the 25th November 1915 under orders of this Vice-chairman, He remained under suspension till the 27th April 1917, i,e" for a period of one year, five months and two days, when he was removed permanently from this post. No reasons were assigns for his suspension or removal. In the picent suit, he sues to recover his wages from the 25fch November 1915 till the 27ih April 1917, less the amounts which were paid to him by way of compassionate allowance for five months and five days during the period of suspension. In our opinion, there is no answer to the claim,

2. It is not necessary for as to investigate the powers of the Municipality to dismiss servants, because the plaintiff does not seek to recover damages for wrongful dismissal. It is perfectly plain that as the plaintiff was not dismissed till the 2/fch April 1917 and as no reasons were assigned for that removal from his office, he is entitled to his wages during the whole of the period for which he was under

suspension.

3. It was contended for the appellant that the Municipality was entitled to remove the plaintiff without notice and without assignment of reason. We are unable to uphold this contention as well founded reason and principle. It has been held in England that if no assent or stipulation as to notice exists, and if the contract of service is not one which can be regarded as a yearly hiring, the service is terminable by reasonable notice. In support of this proposition, references may be made to the case of *Fairman v. Coker* (1860) 5 H. & N. 635 : 29 L.J. Ex. 459 : 157 E.R. 1334 : 120 R.R. 747 where Pollock, C.B., pointed out that in the case of clerks in superior positions three months is regarded as the period of reasonable notice see also the observations of Abbott, C.J. in *Huffman v. Boulnois* (1827) 2 Car. & P. 510 The same view has been taken in the cases of *Foxall v. International Lal Cidit ti.* (1857) 16 L.T. 687 *Gandall v. Tontigny* (1816) 1 Stark . 198 : 4 Camp . 375 *Oriental Bank Corporation, In re, Mac Dowall case* (1886) 32 Ch. D. 366 : 55 L.J. Ch. 620 : 54 L.T. 667 : 34 W.R. 529 It is further stated in the judgment of the Court of first instance, and that finding has not been disturbed by the Subordinate Judge, that no reasons were assigned for the removal of the plaintiff; it has not been found that he was removed for misconduct alleged and proved.

4. In these circumstances, the suit has been rightly decreed, and this appeal is dismissed with costs

Ernest Fletcher, J.

I agree.