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## District Board Vs Jogesh Chandra Basu

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**Court:** Calcutta High Court

**Date of Decision:** Jan. 21, 1943

**Acts Referred:**

Bengal Local Self-Government Act, 1885 " Section 146

**Citation:** AIR 1943 Cal 447

**Hon'ble Judges:** Pal, J; Akram, J

**Bench:** Full Bench

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## Judgement

Pal, J.

This appeal is by the defendant in a suit for compelling the defendant District Board to contribute to the plaintiff's provident fund account. The defendant is the District Board of Khulna and the plaintiff is a retired employee of the board. He retired in October 1936 after

rendering 31 years" continuous good service. During this period he subscribed to the provident fund maintained by the District Board and the

District Board also contributed its quota to that fund. The case of the plaintiff is (1) that on his retirement he became entitled to an additional

contribution from the District Board at the rate of half a month"s pay for each complete year of service rendered by him, subject to a maximum of

15 month"s pay under Rule 5A of the Provident Fund Rules of the Board, 2) that the board granted to him only eight months" pay as such

additional contribution, under that rule and (3) that he was entitled under the rule to a contribution of further seven months" pay. The case of the

defendant is (1) that the additional grant under the rule is absolutely at the discretion of the District Board, (2) that the plaintiff acquired no right to

claim any contribution under the rule and (3) that the plaintiff"s suit is not maintainable without notice u/s 146, Bengal Local Self-Government Act,

1885.

2. The Courts below held that Section 146, Bengal Local Self-Government Act, 1885, did not contemplate a suit against the District Board as

such, but was applicable only to suits against the members of any District Board or against any of their officers. This is the plain reading of the

section, and we are in complete agreement with the views expressed by the learned District Judge in this respect. As regards the merits of the

claim, both the Courts held (1) that the question whether or not any additional contribution as contemplated by the rule should be made in any

particular case was at the discretion of the District Board, but (2) that, if the District Board in any case decided to make an additional contribution,

the rate fixed by the rule was imperative subject, to the maximum prescribed by it. On this view both the Courts below decreed the plaintiff's

claim. Dr. Basak appearing in support of the appeal contends that the rule simply empowers the District Board to make an additional contribution

and imposes limits on this power as to (1) the object of the grant, (2) the rate on which contribution can be made and (3) the maximum that can be

contributed. It does not create any obligation on the part of the District Board to contribute anything under any circumstances, and does not confer

on the employees any right or claim to any contribution. According to Dr. Basak the rule reads thus:

...the District Board may grant...an additional contribution at any rate not exceeding half a month's pay for each complete year of service...subject

to a maximum of 15 months' pay....

3. Dr. Sen Gupta appearing for the respondent contends that no rule was needed for giving the District Board power to make a grant of this

character. The District Board was already given that power by section 53 (fourthly), Bengal Local Self-Government Act which made the District

Fund applicable

to the payment of any grants made for supplementary contributions by members of such establishments to any Provident Fund created u/s 33A....

4. According to him the District Fund vests in the District Board u/s 52 of the Act and it is applicable to the payment of such contributions u/s 53

as shown above. No rule therefore is needed to create this power in the District Board. The rule is made to regulate the exercise of this power. No

doubt it is a self-imposed regulation; but all the same it is a regulating rule. The rule in its first part by saying that the District Board ""may grant"" only

reiterates its power already existing, but when the District Board prescribes the rate it does that with the object of regulating the exercise of this

power and the exercise of the power is to be regulated by these fetters thus imposed by the Board on itself. According to Dr. Sen Gupta the rule

reads thus

...the District Board may grant...an additional contribution (and if it decides to make such a grant) must grant at the rate of half a month's pay for

each complete year of service...subject to a maximum of 15 months' pay....

5. Dr. Sen Gupta then contends that the rule itself gives indication of its imperative character as to the rate and amount of the contribution if

decided to be made. He refers to the last sentence of the rule, which says ""the amount of contribution shall be calculated on the pay drawn by him

at the time of retirement,"" and contends that at least this portion of the rule is imperative and the District Board retains no option or discretion in

itself in this respect. The rule in question stands thus:

In addition to the sum contributed to the deposit account of each servant, the District Board may grant from the District Fund at the time of the

retirement to any servant who has subscribed to the Provident Fund, and has rendered continuous good service for not less than 15 years, an

additional contribution at the rate of half a month's pay for each complete year of service rendered by such servant, subject to a maximum of 15

months" pay. The amount of contribution shall be calculated on the pay drawn by him at the time of retirement.

6. This rule has been made by the District Board u/s 35A, Bengal Local Self-Government Act of 1885, with the sanction of the Commissioner and

of the Local Government and it has been made part of the Provident Fund Rules, having been made Rule 5A of such rules. The rule uses the word

may"" and at least in form it is one which only seems to confer a power on the District Board to make the grant. There is no doubt that there may

be circumstances under which the word ""may"" may have a compulsive force. But that is not because the word "may" itself changes its meaning and

means " must" in those circumstances. The word is an enabling word, and, as was observed by Cotton, L.J. in *Re Baker; Nichols v. Baker* (1890)

44 Ch. D. 270, ""May"" lean never mean must, so long as the English language retains its meaning, but it gives a power, and then it may be a

question in what cases, when any authority or body has [a power given it by the word "may," it becomes its duty to exercise that power. When

such becomes the position then the proper tribunal will require it to be exercised: *Julius v. Oxford* (1880) 5 A.C. 214.

7. The present is not a case of this type. No doubt u/s 52 the District Fund is vested in the District Board. But the application of the fund by the

District Board is restricted in various ways. Section 53 of the Act specifies the objects to which and the order in which the fund can be applied.

Even temporary and accidental deviations are regulated by Section 53A. Section 138 of the Act empowers the Local Government to make rules in

order to regulate almost all the powers of the District Board to spend the fund. Sections 47 to 49 provide for further regulation of such expenditure

by the Magistrate of the District and the Commissioner of the Division. Every District Board is required by Section 47 of the Act to submit to the

Magistrate of the District, for transmission to the Commissioner, (1) a statement of the requirements and an estimate of the probable expenditure of

the District Board for the ensuing financial year and (2) an account of its receipts and expenditure for the part financial year. The Magistrate is

required to signify his approval or disapproval of the statement of requirements and estimates. He is empowered to scrutinise every particular

contained in these statements and may object to them as being erroneous, defective or improper. The Commissioner is given much wider power by

Section 48 of the Act. He may either approve of the estimate as it stands or approve of it after making such alterations therein as may seem to him

fit or may cause it to be returned to the Board for such modifications as he may think necessary.

8. These provisions of the Act will explain why a rule like the one under our consideration will be necessary to regulate the power of the District

Board even in making payments ex gratia. No doubt Section 53 of the Act makes the District Fund applicable to the making of supplementary

contributions contemplated by the rule in question. But the provisions of that section would not be any guide to these various authorities as to what

amount should be contributed in any particular case. A rule like the one under our consideration would be expedient guide to the District Board,

District Magistrate, the Commissioner and the Auditor alike. The rule, when it says "the District Board may grant," only means that it shall be

lawful for the board to grant at the rate contemplated by the rule. The rule only confers a faculty or power and does not of itself do more than that.

There is again nothing in the nature of the thing empowered to be done by this rule, nothing in the object for which it is to be done, nothing in the

conditions under which it is to be done, nothing in the title of the person for whose benefit the power is to be exercised which will couple this

power with a duty and make it the duty of the District Board to exercise that power.

9. Considering all this, I am of opinion that the contention of Dr. Basak must be accepted in this case. The contribution contemplated by the rule is

intended to be ex gratia. By making the rule the District Board has only taken power to apply the District Fund to the making of such a grant. In

taking this power the District Board puts limits to the power taken by prescribing a rate and a maximum limit. All these provisions are there only to

enable the various reviewing authorities to check the actual application of the fund by the District Board to this object. The District Board cannot

go beyond the bounds prescribed by the rule. Within its power is absolutely at its discretion subject to the approval, disapproval and

modifications at the instance of the Magistrate and the Commissioner. The last sentence of the rule is also perfectly consistent with this meaning. It

is equally intended to fix the maximum limit in each particular case and is only explanatory of the words "month's pay" used in the rule. In the result

this appeal must be and is allowed. The judgments and decrees of the Courts below are set aside and the plaintiff's suit is dismissed. As the rule

cannot be said to have been clearly expressed and as even according to the District Board the plaintiff was otherwise fully qualified for the

maximum grant claimed by him in this suit, we are of opinion that the parties should bear their respective costs in all the Courts.

Akram, J.

10. I agree.