

## Debendra Nath Kar Vs Commissioner of Tamluk Municipality

**Court:** Calcutta High Court

**Date of Decision:** Aug. 12, 1970

**Citation:** (1973) 2 ILR (Cal) 708

**Hon'ble Judges:** P.N. Mookerjee, J; Amiya Kumar Mookerji, J

**Bench:** Division Bench

**Advocate:** Arun Kumar Dutta, Jr, for the Appellant; Bijoy Basanta Koley and Ali Mohammad, for the Respondent

**Final Decision:** Dismissed

### Judgement

P.N. Mookerjee, J.

This appeal under Clause 15 of the Letters Patent has been filed by the Appellant, who was the Plaintiff in the trial

Court against the judgment of our learned brother B.K. Bhattacharya J., passed in Second Appeal No. 27 of 1957. The suit in question was a suit

for a declaration, that the Plaintiff was still in service of the Defendant Municipality as a sanitary inspector and for a further declaration that certain

resolutions, passed by the Commissioners of the Municipality purporting to terminate his services, were illegal, ultra vires and null and void and for

setting aside the same. There was also a prayer for recovery of arrears of pay on the above footing.

2. It appears that the Plaintiff was appointed on January 3, 1952, to act as a sanitary inspector of the Defendant Municipality under a temporary

appointment on probation for a period of six months. Thereafter, it appears that by successive resolutions of the Municipality this period was

extended and eventually his services were terminated by the Respondent Municipality with effect from January 1, 1953. According to the Plaintiff,

although he was originally appointed on a temporary basis and on probation, the extension of his services, as aforesaid, or his retention in the said

service after the termination of his original period of probation really amounted to confirmation of him in the permanent post of sanitary inspector to

which his original appointment on probation related. In the second place, the Plaintiff contended that as eventually his services were terminated

really on a finding that he was not efficient, it amounted to a stigma against him, which entitled him to a reasonable opportunity of contesting the

position before termination of his services.

3. The Plaintiff's contentions were not accepted in any of the Courts below and accordingly, the Plaintiff with the leave or certificate of our learned

brother B.K. Bhattacharya J. has come up in this appeal under Clause 15 of the Letters Patent.

4. In support of this appeal Mr. Dutt raised the above two contentions on behalf of the Plaintiff-Appellant. In support of the first, Mr. Dutt referred

us to the recent decision of the Supreme Court reported in State of Punjab Vs. Dharam Singh, . That case, however, is clearly distinguishable and

does not support the Plaintiff's contention on the point. In the case cited there was a specific rule governing the particular service under which

probation could not be extended beyond a particular period. Admittedly, in that case, there was extension beyond the said period and in the

circumstances, the Supreme Court held that no inference could be made contrary to the rules holding that the extension was on the probationary

basis and that, accordingly, an inference was legitimate that the extension or retention of the person concerned in service was really on confirmation

or on a permanent basis. The Supreme Court, in the case cited, distinguished the other case holding that, normally, extension of the probationary

period would be on the probationary basis on the ground that the absence of a contrary rule explained the contrary decision in the said earlier

cases. It is clear from the above that, in view of the admitted fact that there is no contrary rule in the present case, the above Supreme Court

decision can be of no assistance to the Plaintiff and would, on the other hand lend support to the proposition that the Plaintiff's continuance in

service during the extended period was on a probationary basis. The first contention of Mr. Dutt would, accordingly, be overruled.

5. Turning now to the second contention, raised in support of this appeal, it will be seen on a proper construction and appreciation of the

resolutions in question that the Plaintiff's services were terminated at the end of the last extended probationary period really on the ground that he

had failed to avail himself of the opportunity given to him of satisfying the authorities concerned of the compliance with the requirements for his

confirmation. This was not really a finding of inefficiency and did not amount to any stigma to entitle the Plaintiff to take advantage of the decision of

the Supreme Court cited to us on the point, namely, the case of The State of Bihar Vs. Gopi Kishore Prasad, which affirmed the earlier decision of

the Supreme Court reported in Parshotam Lal Dhingra Vs. Union of India (UOI), which the last mentioned authority would plainly support the

validity of termination of the Plaintiff's service.

6. In the above view, we would hold the second contention of Mr. Dutt would also fail.

7. In the result, this appeal is dismissed. There will be no order for costs either in this Court or in any of the Courts below.

Amiya Kumar Mookerji J.

8. I agree.