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viz. that his wife should not go into service or cook for other people, have been obeyed.

It has been suggested that on two occasions the husband had said in writing that he was prepared to support his wife if she lived with him and it is argued that the Magistrate has not gone into this question. The Magistrate, however, in his order has said that the wife was refusing to live with her husband because he had a mistress staying in the house. That would surely be a sufficient reason for the wife to refuse to live with him.

In my opinion there is no ground for interference in revision with the order of the Magistrate and I reject the reference.

APPELLATE CIVIL

Before Mr. Justice Thom and Mr. Justice Rachhpal Singh

1936
November, 23

MUNICIPAL BOARD OF SHAHJAHANPUR (DEFENDANT) *v.* SUKHA SINGH (PLAINTIFF)*

Master and servant—Secretary of Municipal Board—Tenure of office—Dispensing with services at pleasure—Cause of action—Right of suit—Breach of regulations in passing resolution of dispensing with services—Remedy—Civil servant—Whether municipal employee stands on same footing as a civil servant.

The plaintiff had been appointed as Secretary to a Municipal Board. After several years the Municipal Board decided to appoint and did appoint an Executive Officer; and a few months later, by a special resolution passed at a meeting convened for the purpose, the Board abolished the Secretary's post and dispensed with his services. It was not a dismissal and his conduct was never in question. According to the Rules and Regulations of the municipality three days' notice had to be given to the members of the meeting, and in the case of three of the members this was not complied with; but those members were present at the meeting and made no complaint of the shortness of notice. The plaintiff appealed to the Commissioner against the resolution, but was unsuccessful. He then brought a suit against the Municipal Board for a

*First Appeal No. 183 of 1933, from a decree of Bishun Narain Tankha, Subordinate Judge of Shahjahanpur, dated the 31st of January, 1933.

declaration that the resolution was illegal and *ultra vires* and that he still continued to be the Secretary and entitled to his salary:

Held, that a failure by the municipality to observe strictly the rules and regulations in the conduct of its business did not afford the plaintiff a ground for maintaining the present suit. The municipality, when it engages a servant, does not make it part of its contract with him that in the conduct of its business it shall strictly observe these regulations. Furthermore, in the circumstances of the present case, the plaintiff's position had not been at all prejudiced by the irregularity.

A Municipal Board, like any other employer of labour, is entitled to discharge servants it no longer desires to employ. It is true that while specific provision is made in the Act for the dismissal or punishment of a servant, there is no such provision for the discharge of an employee whose services are no longer required; but even without any statutory provision a Municipal Board is clearly entitled to discharge servants whose offices have been abolished as a matter of policy.

Even supposing that the action of the Municipal Board in dispensing with the services of the plaintiff amounted to wrongful dismissal, then, whether he might or might not be entitled to maintain a suit for damages for wrongful dismissal, he was certainly not entitled to maintain a suit for a declaration that he had not been legally dismissed by the defendant Board and that he was still their servant and entitled to continue to draw his salary. The courts have no jurisdiction to force an employer of labour to retain the services of a servant he no longer wishes to employ.

No pronouncement was necessary in the present case on the question as to whether a municipal employee in respect of the conditions of his service enjoys the same rights and is subject to the same disabilities as a civil servant, e.g. whether he could be dismissed at pleasure with no right to maintain a suit for damages.

Messrs. *Muhammad Ismail* (Government Advocate) and *M. N. Raina*, for the appellant.

Sir *Tej Bahadur Sapru*, Dr. *N. P. Asthana* and Messrs. *N. C. Sen* and *L. N. Gupta*, for the respondent.

THOM and RACHHPAL SINGH, JJ.:—This is a defendant's appeal arising out of a suit in which the plaintiff Sardar Sukha Singh prayed for a declaration that a

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special resolution passed by the Municipal Board of Shahjahanpur was illegal and *ultra vires*, and also for arrears of salary.

The plaintiff alleged that he had been in the service of the defendant Board for 32 years, that he had been appointed Secretary to the Board under section 66 of the United Provinces Municipalities Act of 1916 on the 1st of November, 1917, and that he was confirmed in the appointment as permanent Secretary on the 8th of November, 1918. The plaintiff further averred that at a meeting of the Board held in contravention of the rules and regulations of the Board, on the 30th of November, 1930, the Board had passed a resolution to the effect that his services had been dispensed with from that date, and that the resolution was illegal and *ultra vires*. It is alleged also in the plaint that the plaintiff was discharged in order to make provision for the permanent employment of one Munshi Mohsin Ali Khan, a close relation of the Chairman of the Board, who had been appointed to the newly created post of Executive Officer.

In the written statement the Board averred that the resolution of the 30th of November, 1930, dispensing with the services of the plaintiff was legal, and further that the plaintiff had unsuccessfully appealed against the resolution of the Board to the Commissioner. In paragraph 9 of the written statement it is further averred that the meeting of the Board held on the 30th of November, 1930, was in conformity with the rules and regulations and the Board had authority to pass the resolution abolishing the Secretary's post and dispensing with the services of the plaintiff.

At a special meeting of the Municipal Board, Shahjahanpur, held on the 6th of August, 1930, a resolution was passed appointing M. Mohsin Ali Khan as Executive Officer. Under the United Provinces Municipalities Act of 1916 the Municipal Board of Shahjahanpur may appoint either a Secretary or an Executive Officer

or both. When the Board decided to appoint M. Mohsin Ali Khan as the Executive Officer on the 6th of August, 1930, the plaintiff was Secretary of the Board, a position which he had held for about 12 years.

The appointment of M. Mohsin Ali Khan as Executive Officer was approved by the Government by letter dated the 12th of November, 1930.

After the appointment of M. Mohsin Ali Khan it became necessary for the Board to consider whether the services of the Secretary should be retained. Accordingly the Chairman convened a special meeting of the Board for November 30, 1930. A notice convening the special meeting was circulated amongst the members in accordance with the provisions of sub-section (2) of section 87 of the Municipalities Act of 1916 and the Municipal Board's regulations. By regulation 2(1) it is provided that not less than three days before a meeting a notice to attend the meeting, signed by the Secretary, or, in his absence, by the Chairman or a Vice-Chairman, shall be circulated to each member of the Board. The notice convening the meeting for the 30th of November, 1930, was dated the 27th of November, 1930, but it appears that it was not circulated to three of the members of the Board until the 28th of November, 1930. These three members therefore did not receive three days' notice of the meeting. It was maintained on behalf of the plaintiff that the proceedings of the meeting and the resolution dispensing with his services were therefore null and void. It was further maintained on behalf of the plaintiff that the terms of the notice convening the meeting were vague and indefinite and did not clearly inform the members of the Board of the business to be transacted at the meeting. The resolution dispensing with the services of the plaintiff was further challenged upon the ground that in accordance with the regulations he had not been heard in his defence. Finally it was contended for the plaintiff that the resolution dispensing with his services

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was void because one week's notice of the intention to move that his services be dispensed with had not been given in accordance with regulation 5 which appears at page 38 of the Manual of Regulations.

We are satisfied, after a full consideration of the authorities cited to us by learned counsel for the appellant and respondent, that a failure to observe the rules and regulations does not afford the plaintiff a ground for maintaining the present action. The Municipal Regulations are a body of rules passed for the guidance of municipalities in the conduct of their business. The municipality when it engages a servant does not make it part of its contract with him that in the conduct of its business it shall strictly observe these regulations. It may be that three of the members of the Municipal Board did not receive timely notice of the meeting convened for the 30th of November, 1930. We cannot see how this irregularity can affect the rights of the plaintiff. All the members of the Board were present at the meeting of the 30th of November. None of the members complained that they had not received due notice of the meeting. A member who has not received due notice of the meeting no doubt would have just cause for complaint. None of the three members who received late notice however complained in the present instance, and we are satisfied that not only has the plaintiff's position not been prejudiced by the irregularity but that, in any event, the irregularity affords no ground for maintaining the present suit. We would refer in this connection to the Privy Council decision in the case of *Shenton* v. *Smith* (1). The plaintiff in that case had been dismissed by the Government of Western Australia. He complained that the action of the Government was illegal and *ultra vires* and he pleaded *inter alia* that the Government had failed to observe the regulations prescribed for it by the Colonial office in the matter of the dismissal of its servants. This

(1) [1895] A.C., 229.

plea is considered at page 235 of the judgment. It is there observed: "As for the regulations, their Lordships again agree with STONE, J., that they are merely directions given by the Crown to the Governments of Crown Colonies for general guidance, and that they do not constitute a contract between the Crown and its servants . . . They are alterable from time to time without any assent on the part of Government servants, which could not be done if they were part of a contract with those servants . . . No authority, legal or constitutional, has been produced to countenance the doctrine that persons taking service with a Colonial Government to whom the regulations have been addressed, can insist upon holding office till removed according to the process thereby laid down. Any Government which departs from the regulations is amenable, not to the servants dismissed, but to its own official superiors, to whom it may be able to justify its action in any particular case." In our judgment the principle adumbrated in their Lordships' observations above quoted apply to the circumstances of the present case. The plaintiff as a mere servant of the municipality was not entitled to insist that the municipality should strictly observe the rules and regulations prescribed for the conduct of its business.

We would observe further that whilst there may have been an irregularity in respect that three of the members of the Board did not receive timeous notice of the meeting of the 30th of November, 1930, the facts do not justify the allegation that in the proceedings leading up to the discharge of the plaintiff there were any further irregularities. The notice, it was maintained by the plaintiff, convening the meeting on the 30th of November, was vague and indefinite. This plea has been upheld by the learned Subordinate Judge. In our view, however, the notice is clear and definite. We are satisfied from a consideration of the evidence that each member of the Municipal Board was perfectly aware of the business which it was proposed to transact at the

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meeting. In the notice it is specifically stated that the Chairman desired to know if in the circumstances the Board wished to retain the services of the plaintiff. We are further satisfied that there is no force in the plaintiff's contention that the proceedings of the meeting of the 30th of November were invalid in respect that one week's notice was not given of the resolution to dispense with his services. The question of the appointment of an Executive Officer had come before the Municipal Board as far back as August, 1930. The members of the Board were well aware that the question of the retention of the services of the Secretary was one which necessarily arose on the appointment of an Executive Officer. The regulation referred to, prescribing one week's notice of a resolution which a member of the Board may wish to bring forward, has no application to the circumstances of the present case Ample notice was given in accordance with the rules to the members of the Board of the matters which were to be considered at the meeting of the 30th of November, 1930, and it cannot in reason be maintained that for every resolution or counter-resolution which may be debated at a meeting of the Board in the transaction of its business one week's notice is essential under the aforementioned regulation. To extend this regulation as urged by the plaintiff would render the conduct of the ordinary business of a Municipal Board impossible.

We proceed now to discuss the plaintiff's contention that the resolution discharging him was irregular in respect that he was not given an opportunity of being heard in his defence. It is quite clear from a consideration of the documents on record that the plaintiff was not *dismissed*. His conduct was never in question. As a matter of policy the Municipal Board decided to retain the services of an Executive Officer only. They therefore dispensed with the services of the plaintiff; they did not dismiss him. Learned counsel for the plaintiff

maintained that under the provisions of the Municipalities Act of 1916 the Municipal Board had no power to dispense with the services of its servants. Learned counsel for the Municipal Board, on the other hand, contended that section 71 of the Municipalities Act gave power to the Municipal Board to discharge a servant whose services were no longer required. Section 71 is in the following terms: "A Board may by resolution determine what servants (other than the Executive Officer, Secretaries *appointed under section* 66, Engineers, the Health Officer or temporary servants appointed under section 70) are required for the discharge of the duties of the Board and the salaries to be paid to them respectively." The learned Government Advocate contended that this section by implication empowered the Municipal Board to discharge servants whose services were no longer required. There is certainly force in this contention. Apart altogether from section 71, however, we are satisfied that a Municipal Board, like any other employer of labour, is entitled to discharge servants it no longer desires to employ. It is true that while specific provision is made in the Act for the dismissal or punishment of a servant, there is no such provision for the discharge of an employee whose services are no longer required. Without special statutory provision, however, a Municipal Board is clearly entitled to perform all the acts necessary in the conduct of its business. The discharge of servants whose offices have been abolished as a matter of policy is, in our judgment, clearly a step which a Municipal Board is entitled to take in the conduct of its business. We would observe in this connection that in the later Act of 1932 there is special provision made for dispensing with the services of an employee by a Municipal Board.

It was contended further on behalf of the plaintiff, however, that the action of the Municipal Board in dispensing with the services of the plaintiff amounted to wrongful dismissal. Even if this contention be accepted,

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we are satisfied that the plaintiff is not entitled to a decree in terms of the prayer of his plaint. Provision is made in the Municipalities Act for a right of appeal by a servant of a Municipal Board who considers that he has been wrongfully dismissed. As already noted, the plaintiff appealed unsuccessfully to the Commissioner against the resolution of the Board dispensing with his services. It was maintained for the plaintiff, however, that apart altogether from statutory provision he had a right at common law to maintain an action for damages for wrongful dismissal. It was argued that a municipal employee was not in the same position as a civil servant and that he could not be dismissed at pleasure with no right to maintain a suit for damages. We are not concerned in this appeal with the question as to whether a municipal employee in respect of the conditions of his service enjoys the same rights and is subject to the same disabilities as a civil servant. Upon that question we prefer, after a consideration of the authorities cited, to make no pronouncement one way or the other. Assuming that the plaintiff *is* entitled to seek a remedy in the courts in respect of wrongful dismissal, we are clearly of opinion that he is not entitled to maintain the present suit. It may be that the plaintiff was entitled to maintain a suit for damages for wrongful dismissal. There can be no doubt, however, in our judgment that he is not entitled to maintain a suit for a declaration that he had not been legally dismissed by the defendant Board and that he was still their servant and entitled to continue drawing his salary. The courts have no jurisdiction to force an employer of labour to retain the services of a servant he no longer wishes to employ. Every employer is entitled to discharge a servant for whose services he has no further need. If his discharge amounts in the circumstances to wrongful dismissal then, no doubt, the employee is entitled to damages. He is not, however, entitled to a declaration that he is still in the employment of his master, nor is he entitled

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to claim the continuance of his salary from his employer. Whatever the rights, therefore, of the plaintiff are, it is clear in our judgment that the present suit has been entirely misconceived.

In the result we allow the appeal, set aside the decree of the learned Subordinate Judge and dismiss the suit. The defendants are entitled to their costs throughout.

MISCELLANEOUS CIVIL

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Niamat-ullah

And on a reference

Before Mr. Justice Allsop

MUNNI SINGH AND OTHERS (DEFENDANTS) *v.* BASDEO SINGH AND OTHERS (PLAINTIFFS)*

1936
October, 1
November, 25

Court Fees Act (VII of 1870), section 7(iv)(c) and (v); schedule I, article 1; schedule II, article 17(iii)—Suit for declaration (ba-istiqrar) of joint title and possession and for joint possession—Declaratory relief—Consequential relief—Substantive relief—Construction of language of relief in the light of the allegations in plaint.

The plaint alleged that the plaintiffs and the defendants were members of a joint Hindu family, and that a document purporting to be a deed of partition was fraudulent and void. The first relief claimed was partition of the whole of the property mentioned in the plaint. A second relief was claimed, in the alternative, to the following effect: "If in the opinion of the court the plaintiffs are not found entitled to the first relief, then on declaration (*ba-istiqrar*) of the fact that the property mentioned in list B of the plaint was acquired with the joint funds of the parties and that the parties are in joint possession and occupation thereof, the plaintiffs may be put in possession of a moiety share jointly with the defendants." The question was what court fee was payable in respect of this second relief:

Held, by a majority, that article 1, schedule I of the Court Fees Act applied, but it must be applied in connection with section 7(v) of the Act and the court fee payable was that which would be payable if the suit had been one for possession without any mention of a declaration.

*Stamp Reference in First Appeal No. 471 of 1932.