

decree-holder. We therefore consider that the decisions of the lower courts are perfectly correct.

We accordingly dismiss the miscellaneous appeal of Salamattullah, which we have treated as an application for revision under section 115 of the Code of Civil Procedure, with costs.

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Application dismissed.

APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge,
and Mr. Justice Ziaul Hasan*

DUBRI MISIR, PANDIT (PLAINTIFF-APPELLANT) v. THE
DISTRICT BOARD, FYZABAD (DEFENDANT-
RESPONDENT)*

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October, 8

District Boards Act (U. P. Act X of 1922), section 90(4)—Financial Handbook, Vol. II, chapter XIII, rule 128—Fundamental Rules, chapter VIII, rule 54—Suspension of a District Board employee—Prosecution in criminal court—Acquittal for want of proper proof—Employee, if entitled to salary for period of suspension—Suspended officer reinstated for purpose of accepting his resignation—District Boards Act, section 54, if applies.

Employees of District Boards are governed by chapters I to IX of the Fundamental Rules.

Where an employee of a District Board, who has been suspended by the Board and against whom complaints were made in the criminal court, is acquitted merely because the facts proved did not bring him within the letter of the law, he cannot be said to have been "honourably acquitted" and is therefore not entitled to his salary for the period of his suspension under rule 54, chapter VIII of the Fundamental Rules.

The words "ultimately restored" in section 90(4) of the District Boards Act are not intended to apply to a case in which a suspended person is restored for the purpose of his resignation being accepted. Such an employee is, therefore, not entitled to payment of full salary for the period of his suspension.

*Second Civil Appeal No. 372 of 1934, against the decree of Mr. G. C. Badhwar, I.C.S., District Judge of Fyzabad, dated the 11th of September, 1934, confirming the decree of M. Ziauddin Ahmad, Subordinate Judge of Fyzabad, dated the 17th of February, 1934.

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Messrs. *M. Wasim* and *Khalig-uz-Zaman*, for the appellant.

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Mr *S. S. N. Tankha*, for the respondent.

SRIVASTAVA, C.J. and ZIAUL HASAN, J.:—This is a second appeal against a decree of the learned District Judge of Fyzabad who affirmed the decree of the learned Subordinate Judge dismissing the plaintiff-appellant's suit.

Dubri Misir, the appellant, was in the service of the District Board, Fyzabad, as an overseer. He was suspended by the Board on the 23rd of October, 1929, and some complaints were brought against him in the criminal court. In one of these cases in which he was charged for embezzlement of the Board's money he was acquitted by the Assistant Sessions Judge who tried him. In another case in which he was charged under sections 120-B and 119/420 of the Indian Penal Code in respect of several items, he was convicted by the trial court and sentenced to rigorous imprisonment for two years for each offence but on appeal he was acquitted by the Sessions Court on the 7th of May, 1931. It appears that when he was acquitted in the first case on the 26th of June, 1930, he applied to the District Board to be reinstated in his office but the Board replied that his suspension would continue so long as the other case was pending against him. On the 8th of May, 1931, the appellant informed the Board of his acquittal by the Sessions Court but even then he was not restored. On the 16th of September, 1931, the appellant tendered his resignation and asked for his salary for the period of suspension. On the 17th of September, 1931, the Chairman of the Board ordered that Dubri Misir's application be put up before the Board and on the 29th of September, 1931, the Board accepted his resignation and passed a resolution sanctioning the payment of the appellant's salary for the period of his suspension. In the

budget for 1932-33 provision was made for the appellant's salary but this was objected to by the Commissioner of the division. Accordingly in December, 1931, when the revised budget was prepared no provision was made for payment of the appellant's salary. On the 12th of September, 1933, the appellant filed the present suit for recovery of his salary from the 23rd of October, 1929, the date of the commencement of his suspension, up to the 16th of September, 1931, the date on which he tendered his resignation. He also claimed Rs.415-7 as interest on the amount of his salary and Rs.18-12-0 about travelling allowance.

The learned Subordinate Judge was of opinion that the appellant was entitled to the salary claimed by him but holding that his suit was barred by time dismissed it. In appeal the learned District Judge concurred with the finding that the suit was time-barred but also held "that the plaintiff is not entitled to any salary during the period from 23rd October, 1929 to the 16th of September, 1931" and that the resolution of the District Board, dated the 29th of September, 1931, was *ultra vires*. Hence this second appeal by the plaintiff.

We are of opinion that the learned District Judge was right in his finding that the appellant was not entitled to his salary during the period of his suspension. Rule 128, chapter XIII of the Financial Handbook, Volume II, lays down that employees of local funds administered by Government who are not paid from general revenues and are not, therefore, government servants, are subject to the provisions of chapters I to IX of the Fundamental Rules. In rule 9(14) chapter II, "local fund" is defined as—

"(a) revenues administered by bodies which by law or rule having the force of law come under the control of Government, whether in regard to proceedings generally or to specific matters such as the sanctioning of their budgets,

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sanction to the creation or filling up of particular posts, or the enactment of leave, pension or similar rules; and
(b) the revenues of any body which may be specially notified by the Governor General in Council as such."

It is clear that the District Board comes under clause (a) of rule 9(14) quoted above. Therefore under rule 128, employees of District Boards are governed by chapters I to IX of the Fundamental Rules. Now, rule 53, chapter VIII of the Fundamental Rules is as follows:

"A government servant under suspension is entitled to the following payments—

- (a) if a military officer in civil employ to the pay and allowances of the military rank;
- (b) in any other case to subsistence grant".

Rule 43, chapter IV says—

"The amount of subsistence grant shall be regulated as follows—

(a)

(b) in the case of any government servant under suspension other than a member of the Indian Civil Service or a military commissioned officer subject to the Civil Leave Rules, it shall be such as the suspending authority may direct, but shall in no case exceed one-fourth of the pay of the suspended government servant."

So far, therefore, it is clear that a person under suspension can ordinarily be given only a subsistence grant which cannot in any case exceed one-fourth of his pay. Rule 54, chapter VIII provides for cases in which a suspended person can get the full amount of his salary.

That rule is as follows:

"When the suspension of a government servant as a penalty for misconduct is, upon reconsideration or appeal, held to have been unjustifiable or not wholly justifiable: or

when a government servant dismissed or suspended pending inquiry into alleged misconduct is, upon reconsideration or appeal, reinstated—

the revising or appellate authority may grant to him for the period of his absence from duty—

- (a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been

dismissed or suspended and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal or suspension; or

(b) if otherwise, such proportion of such pay and allowances as the revising or appellate authority may prescribe."

It is clear that this rule does not apply to the appellant not only because he was not reinstated but also because he cannot be said to have been "honourably acquitted" in the case in which he was convicted by the trial court. The judgment of the learned Sessions Judge (exhibit 14) shows that the appellant was acquitted merely because the facts proved did not bring him within the letter of the law and towards the close of his judgment the Sessions Judge remarked as follows:

"I am ready to believe that Parmeshwar Dat (a contractor who was a co-accused with the appellant) used materials of inferior quality in the work given to him and that he robbed the District Board and that Dubri Misir and Mr. Mehta (the engineer) had their share in this filthy lucre but on the evidence produced in this case, I find it impossible to hold him guilty of being a member of a criminal conspiracy and cheating."

In these circumstances the appellant cannot be said to have been "honourably acquitted" and is not, therefore, entitled to his salary for the period of his suspension under the rules by which he, as an employee of a District Board, was governed. Section 90(4) of the District Board's Act also makes provision for the payment of full salary to a suspended servant of a District Board but this provision applies only to an officer who is suspended but is "ultimately restored". The appellant was however never restored. It was argued that in his application tendering his resignation the appellant had also applied for his reinstatement and that when the Board by their resolution of the 29th of September, 1931, accepted the appellant's resignation it should be deemed that they also accepted his prayer for reinstatement but in the first place the proceedings of the meeting of the

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District Board on the 29th of September, 1931, do not bear this out. They only say—

“Resolved that the resignation be accepted and the pay of S. O. Dubri Misir amounting to Rs.2,289-6 be given to him for the period he remained under suspension after deducting all the dues standing against him”.

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J.

In the second place, even if it be supposed that the appellant was reinstated for the purpose of his resignation being accepted we do not think the words “ultimately restored” were intended to apply to a case in which a suspended person is so restored. It is admitted on behalf of the appellant that the Board allowed him a subsistence grant of Rs.15 per mensem and this is all that he was, in our opinion, entitled to under the rules. We are therefore in agreement with the finding of the learned District Judge that the appellant was not entitled to the salary claimed by him and that therefore his suit must fail.

In view of the above finding, it is unnecessary to consider whether or not the suit was time-barred but apart from the question whether or not an omission is included in “an act done” referred to in section 192 of the District Boards Act, we are inclined to the view that the suit was barred by time as in the notice sent by the appellant’s counsel to the Board on the 22nd of March, 1933, the fact of the Board making no provision about the appellant’s pay in the budget appears to have been taken as giving rise to a cause of action to the appellant and as we have noted above, it was in December, 1931, that the provision about the appellant’s salary was omitted from the revised budget.

The appeal therefore fails and is dismissed with costs.

Appeal dismissed.