

appellant in removing the corpse of the latter's brother from the pit where it was buried to the canal in which it was thrown, has not been examined.

We may further add that the prosecution has alleged no motive for the commission of the crime. The learned Government Advocate has argued that the question of motive is immaterial. In our opinion the question of motive loses its significance where the crime of murder has been proved beyond reasonable doubt by satisfactory and reliable evidence of eye-witnesses who saw the commission of the crime. In the present case, however, the facts are very different. The appellant is charged with the murder of his younger brother aged 17. It is alleged that he had quarrels with his brother, but it is well known that even the most loving of brothers and sisters do occasionally quarrel among themselves, but that would be no reason for one brother committing the murder of another. The fact that it is a motiveless crime makes the evidence of the alleged eye-witnesses Jagnu and Bahadur all the more incredible.

For the reasons given above, we allow this appeal of Brijpal Singh, set aside the conviction and sentence passed upon him, acquit him of the offence charged and order his immediate release.

Appeal allowed.

APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge
and Mr. Justice H. G. Smith*

THE DISTRICT BOARD OF BAHRAICH, (DEFENDANT-APPELLANT) *v.* NAZEER HUSAIN (PLAINTIFF-RESPONDENT)*

1936
September 3

*United Provinces District Boards Act (X of 1922), sections 45,
82 and 90(4)—Dismissal of an employee of District Board—*

*Second Civil Appeal No. 302 of 1934, against the decree of Pandit Shyam Manohar Nath Shargha, District Judge of Gonda, dated the 31st of August, 1934, modifying the decree of Pandit Bishu Nath Hukku, Subordinate Judge of Bahraich, dated the 30th of October, 1933.

1936
BRIJPAL
SINGH
v.
KING-
EMPEROR

*Nanavutty
and Ziaul
Hasan, J.J.*

1936

THE
DISTRICT
BOARD OF
BAHRAICH
v.
NAZEER
HUSAIN

Remedy of the employee provided in the Act is to appeal to Local Government—Civil suit by employee, whether can lie—Suspension of employee—Appeal—Local Government setting aside order of dismissal and directing his reinstatement and immediate suspension again for proper enquiry—Ultimate dismissal—Suit for pay and allowances for period of suspension, whether maintainable—“Temporary absence” in section 45, meaning of—United Provinces District Board Rules, Chapter VII, rule 112—Charge against employee of Board—Enquiry by Chairman, if necessary, to be made by him personally.

A civil suit by a dismissed employee of the District Board to question the validity of an order of dismissal passed against him is not maintainable and he has only a right of appeal to the Local Government under section 82, U. P. District Boards Act. *Joti Prasad Upadhia v. Amba Prasad* (1), and *Roshan Lal Geswala v. District Board, Aligarh* (2), relied on. *Sheo Narain v. District Judge, Shahjahanpur* (3), dissented from.

The scope of the power to order the payment of an allowance during a period of suspension is limited by section 90(4), U. P. District Boards Act, to cases where a suspended officer is ultimately restored. Where, however, an order of dismissal passed against a suspended officer of the District Board is set aside on appeal by the Local Government on the ground that the inquiry had been irregular and he is reinstated and then immediately suspended again with the view to a proper inquiry being held but is ultimately dismissed, then all that can be said is that he was temporarily and not “ultimately restored” within the meaning of section 90(4), District Boards Act, by the order of the Local Government, and so he is not entitled to claim his pay and allowances for the period of suspension.

“Temporary absence” in section 45(1)(b), U. P. District Boards Act, does not mean absence from the district. Accordingly it is not necessary to prove that the Chairman is out of the district before the provisions of section 45(1)(b), U. P. District Boards Act, can come into operation.

All that the Chairman is required to do under rule 112 of Chapter VII, U. P. District Board Rules, is to institute an inquiry into a charge against an employee of the District Board and there is nothing in the rule which necessitates his holding the inquiry himself.

(1) (1933) A.I.R., All., 358.

(2) (1935) I.L.R., 58 All., 40.

(3) (1933) A.I.R., All., 826.

Mr. *Khaliq-uz-Zaman*, for the appellant.

Mr. *L. S. Misra*, for the respondent.

SRIVASTAVA, C.J. and SMITH, J.:—These appeals are connected, and can be disposed of by one judgment. They arise out of a decision dated the 31st of August, 1934, of the learned District Judge of Gonda, by which he partly allowed an appeal against a decision, dated the 30th of October, 1933, of the learned Subordinate Judge of Bahraich.

1936
 THE
 DISTRICT
 BOARD OF
 BAHRAICH
 v.
 NAZEER
 HUSAIN

One Nazeer Husain was appointed as a sub-overseer of the Bahraich District Board in the month of July, 1929, on a remuneration of Rs.60 a month as his pay and Rs.40 per mensem as fixed travelling allowance. He was suspended on the 25th of June, 1931, for reasons into which we need not enter. After an enquiry, he was dismissed by the Chairman of the Board on the 19th of August, 1931, but he appealed to the Local Government, which, by an order, dated the 3rd of March, 1932, set aside the order of dismissal, on the ground that the enquiry had been irregular, and directed that he should be reinstated and then immediately suspended again with the view to a proper enquiry being held. On the 17th of March, 1932, Nazeer Husain, having on the 15th of March, 1932, been given information of the order of the Local Government, presented himself for duty. It was reported by the head clerk that the Chairman of the Board was out of the district, and the senior Vice-Chairman on that same date, the 17th of March, 1932, passed an order suspending Nazeer Husain again. A fresh enquiry followed,—it was held by the senior Vice-Chairman under an order of the Chairman, dated the 14th of April, 1932. The Vice-Chairman submitted his report on the 19th of October, 1932, and after Nazeer Husain had been given a final opportunity of making his explanation, the Chairman passed a second order of dismissal against him on the 13th of December, 1932. This order was communicated to Nazeer Husain

1936

THE
DISTRICT
BOARD OF
BAHRAICH
v.
NAZEER
HUSAIN

*Srivastava,
C.J. and
Smith, J.*

on the 17th of January, 1933. The Chairman incidentally ordered that Nazeer Husain should receive no pay or allowances during the period of his suspension, and this apparently has been interpreted as referring to the whole period of suspension beginning from the 25th of June, 1931. Nazeer Husain on the 24th of March, 1933, instituted the suit out of which these two appeals arise claiming a simple money-decree for Rs.2,100 for his pay and permanent allowance from the 24th of June, 1933, instituted the suit out of which these two appeals decree for his pay and permanent allowance during the pendency of the suit; a declaration that the order of dismissal of the 13th of December, 1932, was *ultra vires*, the costs of the suit; and interest at 1 per cent. per mensem "during the pendency of the suit till the date of realisation". The suit was dismissed in its entirety by the learned Subordinate Judge of Bahraich, but on Nazeer Husain's appealing, the learned District Judge of Gonda decreed him Rs.100 per mensem from the 25th of June, 1931, to the 12th of December, 1932, together with interest during the pendency of the suit at 6 per cent. per annum, and future interest at that same rate till realisation. Against that decision the District Board of Bahraich and Nazeer Husain have both appealed, the District Board's appeal being No. 302 of 1934, and Nazeer Husain's No. 360 of 1934.

The contention of the Board is that nothing should have been decreed to Nazeer Husain, while Nazeer Husain contends that his claim ought to have been decreed in full. Alternately, it is contended on his behalf that in any case he ought to have been decreed, in addition to what was decreed to him by the learned District Judge, his "pay" for the period between the date of the final order dismissing him and the date of the communication of that order to him, and a further period of two months thereafter.

We do not think it necessary to enter into a discussion of the charges that were made against Nazeer Husain either on the first or the second occasion, since the

appeals were argued before us on points of law only. The main points for determination may be stated thus:

(1) Was Nazeer Husain legally entitled to institute a civil suit either to question the validity of the order of dismissal passed against him, or to claim his pay and allowances?

(2) Was the final order of the Chairman of the Board of the 13th of December, 1932, by which he dismissed Nazeer Husain, "ultra vires"? With this question are connected the subsidiary questions:

(a) Whether the senior Vice-Chairman had authority to pass the second order of suspension on the 17th March, 1932; and

(b) Had the Chairman power to direct the senior Vice-Chairman to hold an enquiry into the charge in respect of Nazeer Husain's conduct?

The first of the above questions goes to the root of the matter. In connection with it we have been referred on behalf of Nazeer Husain to a case of the Allahabad High Court reported in *Sheo Narain and another v. District Judge, Shahjahanpur and another* (1). That was a single Judge decision by Mr. Justice YOUNG (now Sir Douglas Young, Chief Justice of the Lahore High Court). On behalf of the District Board we have been referred to two other decisions of the Allahabad High Court reported in *Joti Prasad Upadhiya v. Amba Prasad* (2) and *Roshan Lal Geswala v. District Board, Aligarh and another* (3). Those decisions are both Bench decisions.

In *Joti Prasad Upadhiya v. Amba Prasad* (2), referred to above, it was held (we quote from the head-note), "when the legislature has prescribed a particular method for the redress of an alleged wrong that method alone is open to the aggrieved party and in such a case the civil court has no jurisdiction to deal with the matter reserved by the legislature to a specially appointed tribunal. Hence the jurisdiction of the civil court to try a suit challenging the validity of the election of a

1936

THE
DISTRICT
BOARD OF
BAHRAICH
v.
NAZEER
HUSAIN

*Srivastava,
C.J. and
Smith, J.*

(1) (1933) A.I.R., All., 826. (2) (1933) A.I.R., All., 358.

(3) (1935) I.L.R., 58 All., 40.

1936

THE
DISTRICT
BOARD OF
BAHRAICH
v.
NAZEER
HUSAIN

Chairman of a District Board is impliedly barred by section 35(3), District Boards Act, and even an arbitrary disregard by the Local Government of the mandatory provisions of that section by refusing to appoint a tribunal to decide the question does not bring into play the jurisdiction of the civil court."

Srivastava,
C.J. and
Smith, J.

The case there under consideration was not one of a dismissed employee, but the general principle laid down supports the contention raised before us on behalf of the District Board that no civil suit by Nazeer Husain in the present matter was maintainable. In the case of *Roshan Lal Geswala v. District Board, Aligarh and another* (1), there was an elaborate discussion by BENNET, J. of the law applicable to such cases. In that case the facts, as stated in the head-note, were that "a District Board passed a special resolution abolishing the posts of the Secretary and the Engineer and creating a new combined post of Secretary-Engineer; the services of the Secretary were accordingly dispensed with and the Engineer was appointed to the new post; the Secretary, however, received his salary for the next four months. The resolution was not one passed by such a majority as is laid down by section 71 of the District Boards Act. The ex-Secretary brought a suit against the District Board and the Secretary of State for a declaration that the resolution was void and his dismissal wrongful, and for damages". It was held that the suit was not maintainable.

In the case of *Sheo Narain and another v. District Judge, Shahjahanpur and another* (2), relied on by the learned Counsel for Nazeer Husain, it was held (we quote again from the head-note):

"Though in the ordinary case of a master and a servant, an injunction certainly would not lie restraining a master from dismissing his servant, the remedy of the servant, if he was wrongly dismissed, would be for damages. In the case of the District Board the servants being governed by the District Boards Act and

(1) (1935) I.L.R., 58 All., 40.

(2) (1933) A.L.R., All., 826.

the rules framed thereunder a dismissed servant can ask the Court for an injunction on the ground that the rules relating to dismissal have not been complied with."

In the judgment of BENNET, J. in the case of *Roshan Lal Geswala v. District Board, Aligarh and another* (1), the decision relied on by the learned counsel for Nazeer Husain was referred to, and it was pointed out (vide page 57 of the report) that that case stands alone as far as District Board servants are concerned. At page 59 BENNET, J., remarked as follows:

"Now the ruling of Mr. Justice YOUNG cannot be taken as any authority on the question of whether a suit will lie by a servant of a District Board against the Board, because it apparently never occurred to him or to the learned counsel in that case that any question could arise that the servant of a District Board had no such right. He quotes no authority on the subject nor does he attempt to distinguish between the case of a servant of a District Board and any other public servant."

Later on the learned Judge remarked (vide page 60 of the report):

"In the face of the numerous rulings already set out which show that public servants have no right to sue in a court of law for wrongful dismissal, the solitary ruling of a learned single Judge in which the point was not even considered cannot prevail."

The provisions of section 82 of the United Provinces District Boards Act (X of 1922), as far as they relate to the present matter, run as follows:

"82. Except in the cases provided for by sections 70, 71, 72 and 82-A, the power to decide all questions arising in respect of the service, leave, pay, allowances and privileges of servants of the Board, who are employed whether temporarily or permanently, on a monthly salary of more than Rs.25, and the power to appoint, grant leave of absence, to punish, dismiss, transfer and control such servants of the Board, shall vest in the

1936

 THE
DISTRICT
BOARD OF
BAHRAICH

v.

NAZEER
HUSAIN
*Srivastava,
C.J. and
Smith, J.*

1936

THE
DISTRICT
BOARD OF
BAHRAICH
v.
NAZEER
HUSAIN

*Srivastava,
C.J. and
Smith, J.*

Chairman, and the said powers in the case of all other servants of the Board shall vest in the Secretary:

Provided first, that in case the Chairman in the exercise of his powers under this section dismisses a servant of the board or imposes a fine exceeding in amount one month's pay of the person fined or orders suspension for a period exceeding one month or orders reduction by way of punishment or supersedes any such servant in the matter of promotion the said servant shall have a right of appeal to the Local Government within one month from the date on which the order of the Chairman is communicated to him."

When the first order of dismissal was passed against him, Nazeer Husain availed himself of the right of appeal to the Local Government, which he had under the proviso above quoted. We are informed that he also appealed to the Local Government against the second order of dismissal. According to the judgment of the learned District Judge, the second order of dismissal was affirmed by the Local Government. This, we were informed at the hearing of these appeals, is not so,—we were told that the disposal of that appeal is awaiting the decision of the two appeals that are before us. However that may be, the fact remains that Nazeer Husain had a right of appeal to the Local Government against the orders dismissing him, and he did, in fact, so appeal against both the orders for his dismissal, being on the first occasion successful. In these circumstances we consider, having regard to the principles so exhaustively laid down in the case of *Roshan Lal Geswala v. District Board, Aligarh and another* (1), that the present suit, as far as it was directed against the order for the dismissal of Nazeer Husain, was not maintainable.

As regards the question of Nazeer Husain's pay and allowances, we have been referred to section 90(4) of the District Boards Act, which runs as follows:

"(4) Where suspension is ordered pending inquiry or orders, and the officer suspended is ultimately restored,

(1) (1935) I.L.R., 58 All., 40.

1936

 THE
 DISTRICT
 BOARD OF
 BARRACK
 v.
 NAZEER
 HUSAIN

*Srivastava,
 O.J. and
 Smith, J.*

it shall be at the discretion of the authority ordering his suspension whether he shall get any, and, if so, what, allowance during the period of suspension; but in the absence of any order to the contrary he shall be entitled to the full remuneration which he would have received but for such suspension."

As we have stated already, the Chairman allowed Nazeer Husain no pay or allowances during the period of his suspension. This order was embodied in the order of dismissal, dated the 13th of December, 1932. It was argued by the learned counsel for Nazeer Husain that at any rate as regards the first period of suspension he was entitled to his pay and allowances, since he was "ultimately restored", by the order of the Local Government, dated the 3rd March, 1932, and no order was passed by the Chairman at that time with regard to his pay and allowances. This argument, although not without some ingenuity, cannot in our opinion prevail. We take the view that Nazeer Husain was not "ultimately restored" within the meaning of section 90(4) of the District Boards Act. All that can be said is that he was temporarily restored. Ultimately he was not restored, but was dismissed. It must be pointed out that the scope of power to order the payment of an allowance during a period of suspension is limited by section 90(4) of the Act to cases where a suspended officer is ultimately restored. We have not had our attention called to any provision in the Act which enables any allowances to be paid to a suspended officer who is not ultimately restored. In these circumstances we think that the learned District Judge misconceived the position in this matter. He thought that as no order to the contrary had been passed prior to the 13th of December, 1932, it was then too late for the Chairman to pass an order disallowing any pay or allowances to Nazeer Husain for the period of his suspension. The learned District Judge clearly lost sight of the fact that the provision of section 90(4) come into operation only when a suspended officer is ultimately

1936

THE
DISTRICT
BOARD OF
BAHRAICH
v.
NAZEER
HUSAIN

*Srivastava,
C.J. and
Smith, J.*

restored. The result is that we think that the order dismissing Nazeer Husain could not be questioned in a civil suit. Even if it be assumed that the question of his pay and allowances stands on a different footing, and could be so questioned, we are of opinion that he had no claim for his pay and allowances during the period in question, and that the decree of the learned District Judge awarding him the greater portion of his claim was incorrect.

Taking the view we do of the way in which the first question stated by us must be answered, it is not really necessary for us to discuss the second question. We may briefly, however, say that in our opinion the order of dismissal was not "ultra vires". The argument on behalf of Nazeer Husain was that the senior Vice-Chairman had no power to suspend him on the 17th of March, 1932. According to section 45(1)(b) of the District Boards Act "a Vice-Chairman shall—

* * * * *

(b) during a vacancy in the office of Chairman, or in case of urgent necessity during the temporary absence or incapacity of the Chairman, perform any other duty and exercise any other power of the Chairman."

The Chairman was not found at his residence at Payagpur at about the time when it became necessary to pass orders for the second suspension of Nazeer Husain. The learned District Judge thought that it was necessary for it to be proved that the Chairman was out of the district before the provisions of section 45(1)(b) could come into operation. We can see no justification for this notion. The sub-section in question merely mentions "the temporary absence or incapacity of the Chairman"; we can see no reason, nor have we been shown any, for holding that the temporary absence means absence from the district. In these circumstances we can see no reason for holding that the senior Vice-Chairman had not power to pass the second order of suspension on the 17th of March, 1932.

1936

THE
DISTRICT
BOARD OF
BAHRAICH

v.

NAZEER
HUSAIN

*Srinivasa,
C.J., and
Smith, J.*

As regards the fact that the enquiry into the charges against Nazeer Husain was held in the first place by the Vice-Chairman, it was contended on behalf of Nazeer Husain that only the Chairman could hold the enquiry. Reference was made to section 112 of Chapter VII of the District Boards Rules (vide page 243 of the District Board Manual). Chapter VII, it may be pointed out, is a special chapter headed "General Accounts". Section 112 runs thus:

"Whenever an embezzlement of the District Board funds is discovered the Chairman of the Board or the Chairman of the education committee as the case may be shall at once institute an inquiry and report the fact immediately to the Examiner, Local Fund Accounts, and to the Commissioner. He shall also lay the whole case before the Board as early as possible."

In the present case there were several charges against Nazeer Husain, some of them quite unconnected with any question of embezzlement of funds, but even if it be supposed that rule 112 of Chapter VII entirely covers the present matter, as it does not, it must be pointed out that all that the Chairman is required to do is to institute an inquiry. There is nothing in the rule which necessitates his holding the inquiry himself.

The only other point that requires to be mentioned is that it is suggested on behalf of Nazeer Husain that the Vice-Chairman did not conduct his inquiry according to any strict legal procedure. We cannot see that there is any force in this contention. According to rule 3 under the heading "Officers and Servants" in Chapter III of the Board's Rules, no officer or servant shall be dismissed without a reasonable opportunity being given him of being heard in his own defence. We think that in the present case Nazeer Husain was given a reasonable opportunity of being heard in his defence, and that there can be no possible force in the contention that in holding the inquiry the Vice-Chairman had to follow any strict rules of legal procedure. In any case, if there

1936

THE
DISTRICT
BOARD OF
BAHRAICH
v.
NAZEER
HUSAIN

Srivastava,
C.J. and
Smith, J.

were any irregularities in connection with the inquiry, as we do not definitely hold that there were, Nazeer Husain had his remedy in the form of an appeal to the Local Government. In the case of *Roshan Lal Geswala v. District Board, Aligarh and another* (1), there appears to have been some irregularity in the proceedings of the District Board concerned, and in that connection ALLSOP, J. in his separate judgment remarked (at page 62):

“The fact that the Secretary was dismissed does not, however, necessarily lead to the inference that he was entitled to institute a suit against the Board. No doubt, the order of dismissal should have been by means of a resolution passed by a majority consisting of two-thirds of the members of the Board, but the question is whether the Secretary can enforce any remedy in a Court of law because the resolution was passed by a majority of less than the requisite number of members. I agree with my learned brother that he could not. It is unnecessary for me to reiterate the arguments with which I am in agreement. The powers of the Board are exercised subject to the general control of the Local Government and it is for the Local Government in its discretion to compel the Board to exercise those powers in a proper manner. I do not consider that the provision that a Secretary should be dismissed only by a resolution passed by a certain majority gives the Secretary a right to institute a suit against the Board. He can doubtless appeal to the Local Government if his dismissal is not warranted.”

The result is that in our opinion the suit of Nazeer Husain should have been dismissed in its entirety, as it was by the learned trial Court. We accordingly allow the appeal (No. 302 of 1934) of the District Board of Bahraich, with costs in all the Courts, and we dismiss, with costs, the appeal (No. 360 of 1934) of Nazeer Husain. Nazeer Husain's suit stands dismissed *in toto*.

(1) (1935) I.L.R., 58 All., 40.