

ORIGINAL CIVIL.

Before Mr Justice Fletcher.

KEDAR NATH BHANDARY

v.

THE CORPORATION OF CALCUTTA.*

1907
 May 21.

Damages, suit for—Wrongful Dismissal—Calcutta Municipal Act (B.C. III of 1899) ss. 15, 63 to 65—Chairman, power of, to appoint Officers on salaries below Rs. 200—General Committee, annual sanction by—Ultra vires.

The provisions of s. 15 of the Calcutta Municipal Act do not apply to the appointment of municipal officers and servants whose appointments are expressly provided for by Chapter VI of the Act.

Under s. 65 of Act, the Chairman may appoint officers and servants on a salary below Rs. 200 a month, but such appointment is subject to an annual sanction by the General Committee; any appointment made outside the terms authorised by the section is *ultra vires*.

THIS was a suit instituted by the plaintiff, Kedar Nath Bhandary, against the Corporation of Calcutta for the recovery of Rs. 4,410 as damage for wrongful dismissal.

The facts are shortly these. In February 1901, the Chairman of the Corporation of Calcutta entered into an agreement with the plaintiff upon the following terms:—"That the plaintiff should be appointed permanently, such employment to continue at least for seven or eight years, provided the plaintiff gave satisfaction and his work was approved." The plaintiff was appointed on a salary of Rs. 150 per mensem, which was increased to Rs. 165 in January 1902, and afterwards to Rs. 175 in January 1904, and finally to Rs. 185 in January 1906. In April 1906, the General Committee of the Corporation decided to abolish the office held by the plaintiff, and served him with a notice to terminate his appointment on the 31st July 1906. The plaintiff raised a question as to the validity of this notice, whereupon the Corporation, on the 4th August 1906, paid the plaintiff a month's salary in lieu of notice.

* Original Civil Suit No. 885 of 1906.

1907
 KEDAR NATH
 BHANDARY
 v.
 THE
 CORPORATION
 OF CALCUTTA.

The Corporation in their written statement stated that even if the Chairman did enter into such an agreement with the defendant for seven years, such agreement was *ultra vires* and illegal.

Mr. B. C. Mitter (*Mr. S. R. Dass* with him), for the plaintiff, submitted that the Chairman could without sanction enter into a contract with an employee for seven years at a salary of Rs. 150 rising to Rs. 165 the first year, and after on an annual increment of Rs. 10, and in support of this proposition cited the following cases:—*Blcgrave v. The Bristol Waterworks Company*(1), *Agar v. The Athenæum Life Assurance Society*(2), and *Royal British Bank v. Turquand*(3).

Mr. Knight and *Mr. Stokes*, for the defendant Corporation, were not called upon.

FLETCHER J. This is a suit brought by the plaintiff, Kedar Nath Bhandary, against the defendants, the Corporation of Calcutta, to recover damages for wrongful dismissal.

The plaintiff alleges in his plaint that in the month of February 1901, he was engaged by the then Chairman of the Corporation as a servant of the defendants upon the following terms, viz., "that the plaintiff should be appointed permanently—such employment to continue at least for 7 or 8 years provided the plaintiff gave satisfaction and his work was approved." The amount of the salary at which the plaintiff was engaged is not stated in the plaint, but I have been informed by the learned counsel for the plaintiff that it was at the rate of Rs. 150 a month.

The plaintiff further alleges that in the course of his employment his salary was increased to Rs. 165 per mensem in January 1902, then to Rs. 175 per mensem in January 1904, and finally to Rs. 185 per mensem in January 1906 and that no complaints were ever made of the way in which the plaintiff discharged his duty. In the month of April 1906, the General Committee of the Corporation decided to abolish the office held by the plaintiff.

(1) (1856) 1 H. & N. 369, 385. (2) (1858) 3 C. B. (N.S.) 725, 752, 753.

(3) (1856) 6 E. & B. 327.

and notice was served on the plaintiff to terminate his appointment on the 31st July 1906.

Objection was taken by the plaintiff as to the validity of the notice; accordingly on the 4th of August 1906, the defendants without prejudice to the validity of the notice, paid to the plaintiff a month's pay in lieu of notice. The plaintiff now claims the sum of Rs. 4,410 (being the amount of his salary from the 1st of August 1906, the date when his employment with the defendants was terminated, down to February 1908 the date when seven years from his appointment will expire) as damages for wrongful dismissal. The defendants in their written statement state that even if the then Chairman of the Corporation did in fact enter into the agreement alleged in the plaint, such Chairman had no statutory or other authority to enter into such agreement and that such agreement, if entered into, was *ultra vires* and illegal. The case has been argued before me on this footing, and as I have come to the conclusion that the contention of the defendants is well founded it is not necessary for me to hear the evidence.

Now the defendants are a body-corporate regulated by the provisions of a special statute, the Calcutta Municipal Act, 1899, (Bengal Act No. III of 1899).

The "Municipal authorities" charged with the carrying out of the provisions of this Act are (i) the Corporation, (ii) the General Committee of the Corporation, and (iii) the Chairman of the Corporation. The statute contains provisions as to the appointment of all three of these "Municipal authorities."

The powers of the Chairman are set forth in section 15, which, so far as material to be here stated, are as follows: "Subject, whenever it is in this Act expressly so directed, to the approval or sanction of the Corporation or the General Committee, as the case may be, and subject also to all other restrictions, limitations and conditions imposed by this Act, the entire executive power for the purpose of carrying out the provisions of this Act shall vest in the Chairman, who shall also prescribe the duties of and exercise supervision and control over the acts and proceedings of all municipal officers and servants, and, subject to the provisions of Chap. VI, dispose of all questions relating to the service of the

1907

KEDAR NATH
BHANDARY
v.
THE
CORPORATION
OF CALCUTTA.

1907
 KEDAR NATH
 BHANDARI
 v.
 THE
 CORPORATION
 OF CALCUTTA.

said officers and servants and their pay, privileges and allowance."

Now pausing here for a moment, this section does not, I think, apply to the appointment of municipal officers and servants whose appointments are expressly provided for by Chap. VI of the Act.

Turning then to Chapter VI of the Act, section 63, the first section in this Chapter applies to the appointment by the Corporation of officers whose pay exceeds Rs. 1,000 a month and section 64 applies to the appointment by the General Committee of servants and officers whose pay exceeds Rs. 300 a month.

All municipal officers and servants other than those mentioned in sections 63 and 64 and other than employees paid by the day or employed temporarily come under the provisions of section 65 of the Act. Section 65 is in the following terms:—(i) "The Chairman shall *annually* prepare and bring before the General Committee a statement setting forth the designations and grades of the officers and servants (other than those mentioned or referred to in sections 63 and 64, and other than employees who are paid by the day or whose pay is charged to temporary work) who should, in his opinion, be maintained, and the amount and nature of the salaries, fees and allowances which he proposes should be paid to each. (ii) The General Committee shall sanction such statement either as it stands or subject to such modifications as they may deem expedient, and provision for the same shall be entered in the Budget Estimate. (iii) All appointments to offices specified in such statement as sanctioned shall be made by the Chairman."

From this section it appears that the appointment of all the subordinate officers and servants receiving pay of less than Rs. 200 a month is vested in the Chairman but the appointments to be made are only the appointments specified in the statement sanctioned by the General Committee, that is, the power of appointing is co-extensive with the sanction given. The sanction contemplated by the section is a sanction to be given annually and any appointment by the Chairman which exceeds this sanction is in my opinion unauthorized. The statute has provided a special mode of appointing these subordinate officers and any appointment made outside the terms authorised by the section is, in my opinion, *ultra vires* whether the appointment be made by the Corporation, the General Committee or the Chairman.

The result, therefore, is that even if the plaintiff establishes that the contract of service set out in the plaint was in fact entered into between himself and the then Chairman of the Corporation, he cannot maintain the present suit which must be dismissed with costs on scale No. 2.

1907

KEDAR NATH
BHANDARI
v.
THE
CORPORATION
OF CALCUTTA.

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R. G. M.