

(1978) 08 AHC CK 0084
In the Allahabad High Court
Case No : Writ Petition No. 623 of 1975

Ashok Kumar Nigam

APPELLANT

Vs

Nagar Palika and Others

RESPONDENT

Date of Decision : 22-08-1978

Acts Referred:

Companies Act, 1956 — Section 3
Uttar Pradesh General Clauses Act, 1904 — Section 4(25)
Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 2, 4

Citation : (1978) AWC 795

Hon'ble Judges : T.S. Misra, J; Prem Prakash, J; Hari Swarup, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

Hari Swarup, J.—A Division Bench while hearing the writ petition has referred the following question of law for our opinion:

Whether an employee of the Nagar Palika/Nagar Mahapalika Is a public servant within the definition of Section 2(b)(ii) and 4(b) of the U.P. Public Services (Tribunals) Act, 1976?.

2. On a consideration of the matter we reframe the question as under:

Whether an employee of the Nagar Palika/Nagar Mahapalika is a public servant within, the meaning of Section 2(b)(ii) and thus entitled to institute a reference of claim u/s 4 of the U.P. Public Services (Tribunals) Act, 1976?

3. The necessity for making the reference arose because of the Division Bench judgment of this Court in Writ Petition No. 4328 of 1971 (At All.) - Kailash Chandra Agrawal v. The State of Uttar Pradesh - in which after the quotation of Section 4 of the U.P. Public Services (Tribunals) Act, it was observed:

It is apparent that this provision only applies in case of the dispute between a public servant and his employer. Although the State Government has various

functions assigned to it under the U.P. Nagar Mahapalika Act, it cannot be said that the Petitioners are employees of the State Government, as they hold statutory post under the Nagar Mahapalika Act and are officers of the Nagar Mahapalika in the eye of law. Thus in the circumstances, it cannot be said that the Petitioners have an alternative remedy of filing a reference u/s 4 of the Public Services Tribunal Act.

4. This part of the judgment shows that the bench had impliedly come to the conclusion that employees of the Nagar Mahapalika were not public servants and as such were not entitled to get their disputes settled by a reference of claim before the Tribunal. With great respect to the learned Judges, we are unable to agree with this view. It appears that the attention of the Division Bench hearing the case of Kailash Chandra Agarwal (supra) was not drawn to the definition of the term "public servant" given in the U.P. Public Services (Tribunals) Act. The definition is as under:

2. In this Act-

(1)

(b) "public servant" means every person

(i) in the service or pay of the State Government, or remunerated by fees or commission for the purpose of any public duty by the State Government; or

(ii) in the service or pay of a local authority, any corporation (not being a company as defined in Section 3 of the Companies Act, 1956, or a local authority owned or controlled by the State Government not including a University or any company as defined in Section 3 of the Companies Act, 1956 in which not less than fifty percent of the paid up share capital is held by the State Government.

"Local Authority" has been defined in Section 4(25) of the U.P. General Clauses Act 1904 as amended by the U.P. General Clauses (Amendment) Act, 1975, as follows:

"local authority" shall mean a Municipal Board or Nagar Palika, Nagar Mahapalika, notified area committee, Town Area Committee, Zila Parishad, Cantonment Board, Kshetra Samiti, Gaon Sabha or any other authority constituted for the purpose of Local State Government or village administration or legally entitled to or entrusted by the State Government with the control or management of Municipal or Local Fund.

5. It is thus clear that for purposes of the U.P. Public Services (Tribunals) Act "local authority" includes a Nagar Palika/Nagar Mahapalika. An employee of the Nagar Mahapalika will therefore, be a "public servant" also for purposes of Section 4 of the U.P. Public Services (Tribunals) Act. An employee of the Nagar Palika/Nagar Mahapalika will accordingly be entitled to institute a reference of claim u/s 4 of the U.P. Public Services (Tribunals) Act.

6. We accordingly answer in the affirmative the question as reframed by us.