

(1961) 02 MP CK 0005
In the Madhya Pradesh High Court
Case No : S.A. No. 494 of 1959

Municipal Committee Dungargarh

APPELLANT

Vs

Mainabai

RESPONDENT

Date of Decision : 22-02-1961

Acts Referred:

Central Provinces and Berar Municipalities Act, 1922 — Section 25(7)(i), 48(1)

Citation : (1963) JLJ 600

Hon'ble Judges : T.C. Shrivastava, J

Bench : Single Bench

Advocate : A.P. Sen, for the Appellant; J.N. Sinha, for the Respondent

Final Decision : Allowed

Judgement

T.C. Shrivastava, J.—The suit out of which this second appeal arises was filed by the Respondent against the Appellant for a declaration that she continue in service of the Appellant and for arrears of salary in lieu of damages for wrongful dismissal.

2. The Respondent was employed by the Appellant Municipal Committee of Dongargarh as a teacher in Municipal Primary Girls School from 1-5-1949. The Plaintiff's case is that on 17-12-1949 by a resolution of the Municipal Committee she was confirmed as Assistant Mistress with effect from 1-5-1949. On 11-12-1952 the Municipal Committee passed a resolution terminating her services with effect from 1-5-1953. She claimed that the termination of the service was contrary to the rules framed under the Central Provinces and Berar Municipalities Act, 1922 (hereinafter referred to as the Act) and therefore the order is illegal and inoperative. She; therefore, sought a declaration that she still continues in service and claimed arrears of pay.

3. The Municipal Committee, Dongargarh admitted that the Plaintiff was employed temporarily from 9-1-1949 but stated that the confirmation by the resolution dated 17-12-1949 was contrary to rules and therefore the Plaintiff

continued as a temporary servant. It was also contended that the Plaintiff was not a trained teacher and as the Additional Inspectress of Schools objected to the continuance of untrained teachers, the Municipality resolved to terminate the services of the Plaintiff along with three others. It was admitted that no departmental enquiry was held before the termination but it was pleaded that this was not necessary as the removal was not by way of punishment. The discharge of the Plaintiff after giving her one month's notice was according to the Defendant, legal. It was also pleaded by the Municipal Committee that the claim was barred by time.

4. The Courts below have held that the Plaintiff had been confirmed in her appointment as an Assistant Mistress. The termination of the Plaintiff's services amounted to removal within the meaning of the rules framed u/s 25(7)(i) of the C. P. and Berar Municipalities Act, 1922 and could not be ordered without a departmental enquiry as prescribed in Rule 2 (a) of those rules.

5. The first question which arises for decision in this appeal is whether the suit is barred by time u/s 48(1) of the C. P. and Berar Municipalities Act, 1922 as it was not brought within six months from the date of the cause of action which has been stated in the plaint to have accrued on 27-3-1953. Shri A. P. Sen relies upon the decision in *Sita Ram Goel Vs. The Municipal Board, Kanpur and Others*, . In that case an analogous provision contained in Section 326 of the U. P. Municipalities Act (2 of 1916) was considered in the context of a suit brought by an Over-seer of the Municipal Board, Kanpur on 8-12-1952 against his removal by a resolution of the Board dated 5-3-1951. It was held that as the suit was brought more than six months after the date of the resolution, it was barred by time in spite of the fact that an appeal by the Over-seer against the order of the Board was pending before the State Government till 7-4-1952.

6. Shri J. N. Sinha for the Respondent argued that there is a difference in the language of Section 326 of the U. P. Municipalities Act (2 of 1916) and Section 48 of the C. P. and Berar Municipalities Act, 1922 inasmuch as the U. P. Municipalities Act provides limitation in respect of "an act done or purporting to have been done in its or his official capacity", whereas the C. P. and Berar Municipalities Act 1922 provides limitation "for anything or purporting to be done under this Act". According to him the removal of the Plaintiff from service was not in accordance with the provisions in the Municipalities Act. I do not agree that this is the correct position. Section 25 of the C. P. and Berar Municipalities Act, 1922 gives power to the Committee to employ officers and servants for the efficient discharge of its duties. Section 15 of the C. P. and Berar General Clauses Act, 1914 reads as follows:

Where by any Act, a power to make any appointment is conferred, then unless a different intention appears, the authority having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power.

Accordingly it is implicit in Section 25 of the Municipalities Act that the Municipality had power to terminate the services of its employee. A power to make any appointment includes a power to suspend or dismiss any person. There fore, the termination of the services of the Plaintiff was in act purporting to be done sunder the provisions of the Municipalties Act and Section 48 fully applies to the case. The suit should, therefore, have been brought within six months from the date of the cause of action and as it was brought much after the expiry of that period, it is barrel by time.

7. The lower Appellate Court has held Section 41 of the Municipalties Act applicable on the view that the action of the Municipal Committee in removing the Plaintiff was not in good faith. I do not find any justification for this conclusion. On 25-3-1952 the District Inspectress of Schools had ordered that the untrained teachers should be trained. The correspondence in Exs. D-7 to D-10 and D-14 shows that the Municipality made an effect to have the Plaintiff trained. The Plaintiff had passed only 6th standard whereas the minimum qualification for training was passing the 7th standard. She was not therefore, selected for training. The Plaintiff was not the only teacher whose services were terminated for being untrained. There were three other Assistant Mistresses whose services were terminated by the same resolution. There is enough material on record to show that the Education authorities were insisting upon employment of only trained teachers and the Municipality was, therefore, right in considering that it would be in the interest of the institution to have trained teachers only. The termination of the services of the Plaintiff was not actuated by any improper motive. The Committee acted in good faith in passing the resolution terminating the Plaintiff's services.

8. The second point raised by Shri A. P. Sen in support of the appeal is that as the termination of the Plaintiff's services was not by way of punishment it was not necessary to hold a departmental enquiry. This contention appears to me equally sound. Sub-section (7) of Section 25 of the C. P. and Berar Municipalities Act, 1922 is as follows:

The Provincial Government may make rules under this Act-

(i) prescribing the departmental punishments which may be inflicted by the president or a committee on its officers and servants and the procedure to be followed in inflicting them.

It is this power which is the source of the "Rules as to the nature of punishments and to the procedure to be followed in inflicting such punishments" framed by the State Government which are printed at page 184 of the M. P. Municipal Manual, Obviously these rules do not do anything more than giving the nature of punishments and the procedure to be followed in inflicting them. The punishments are described in Rule 1. Edplanation 1 provides that the discharge of a person under certain circumstances is not removal or dismissal and Explanation 2 provides that the discharge of a probationer for some specific fault

or on account of his unsuitability for the service, amounts to removal or dismissal Shri Sinha relies on Explanation 2 to bring his case within these rules. However, the rules themselves are subject to the power in the Act under which they are made and as the power is confined to prescribing departmental punishments and the procedure to be followed in inflicting them, the removal of an employee after due notice without any fault cannot be considered to be within the scope of the rules. A punishment implies a stigma on the conduct of the person removed and it is for that reason that a departmental enquiry is considered necessary. The fact that a teacher is not duly qualified on account of want of necessary training does not at all imply any blame on his conduct. The termination of the service for such a reason cannot be regarded to be a punishment. The rules prescribing the departmental enquiry to ascertain the fault of the employee after giving him a reasonable opportunity have, therefore, no application to such a case. As the matter is not governed by Section 25(7)(i), it falls within the ordinary law of master and servants and the Municipal Committee as an employer has the right to terminate the services of any of its employee after reasonable notice provided that the termination is not for any fault or for any thing which caste a stigma on the conduct of the employee.

9. During the course of argument the learned Counsel for the Appellant also pointed that the confirmation of the Plaintiff by resolution dated 24-1-1959 (Ex. D-5) was contrary to the provisions of Rule 14 of the Recruitment Rules printed at page 206 of the Manual, and was, therefore, ineffective Shri Sinha replied by saying that as the Plaintiff was not removed from service after two years, the Municipality should be deemed to have confirmed her under that rule. It is not necessary for me to examine this contention in view of my decision on the first two points

10. In the result, the appeal is allowed. The decision of the lower Appellate Court decreeing the Plaintiff's claim is set aside. Instead, it is directed that the Plaintiff's suit be dismissed. The Respondent shall pay the costs of the Courts below and the costs of this appeal to the Appellant.