

## APPELLATE CIVIL.

1915.

*Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Shah.*June 9.

THE MUNICIPALITY OF RATNAGIRI (ORIGINAL DEFENDANT), APPELLANTS  
*v.* VASUDEO BALKRISHNA LOTLIKAR (ORIGINAL PLAINTIFF), RES-  
 PONDENT.\*

*District Municipal Act (Bom. Act III of 1901), sections 2, 46 and 167—  
 Dismissal of a Municipal Officer—Suit for damages for wrongful dismissal.*

When a District Municipality exercising the power given to it by the District Municipal Act (Bom. Act III of 1901) or the statutory rules made under the Act, dismisses an officer of the Municipality, that is an act done or purporting to have been done in pursuance of the Act within the meaning of section 167.

APPEAL against the order passed by M. B. Tyabji, District Judge of Ratnagiri, reversing the order made by K. B. Wassoodev, Assistant Judge of Ratnagiri.

Suit for damages.

Plaintiff who was the Municipal Secretary of the Ratnagiri Municipality sued to recover Rs. 1,100 as damages for wrongful dismissal from service. The Municipal administration was the subject of constant complaints from Government Officers and the Government on 10th October 1910 issued the following order: "the Municipality should be asked to dismiss the present Secretary at once." The Collector then forwarded the resolutions to the Municipality on 3rd November 1910. The Municipality, thereupon, called a meeting on 10th November 1910 and unanimously resolved to dismiss the Secretary on that date. The plaintiff was accordingly apprised on the 11th November of the fact of his dismissal and he handed over the charge of his office. Subsequently he applied to the Municipality to reconsider his case as the order of dismissal was illegal inasmuch as it was not in conformity with Rule 103 in which it was enacted that "no officer shall be dis-

\* Appeal No. 19 of 1914 from order.

missed without reasonable opportunity being given him of being heard in his defence. Any written defence tendered shall be recorded and a written order shall be passed thereon." On the 20th of July 1912 the Municipality recorded a resolution to the following effect "proper steps be taken and his proposal may then be considered." On the 11th October 1912 after reading the plaintiff's reply the Municipality passed a resolution declining to interfere and confirmed their former resolution of dismissal. The plaintiff alleged that his dismissal really took place on the 11th October 1912 and his suit which was filed on 8th April 1913 was in time according to section 167 of the District Municipal Act (Bom. Act III of 1901).

The defendant Municipality denied the charge of wrongful dismissal and pleaded in defence that the plaintiff's suit was barred by section 167 of the District Municipal Act and Article 2 of Schedule I of the Limitation Act (IX of 1908).

The Assistant Judge held that the act complained of was done in pursuance of the Municipal Act when the Municipality gave orders of dismissal to the plaintiff on the 11th November 1910, and that, therefore, the suit was out of time under section 167 of the Act.

On appeal to the District Judge that decision was reversed and the case was remanded for hearing on merits. Against the order of the District Judge the Municipality appealed to the High Court.

*D. A. Khare* for the appellant.

*G. K. Parekh* for the respondent.

SCOTT, C. J.:—This was a suit filed by the plaintiff, who was formerly the Municipal Secretary of the Ratnagiri Municipality, against that Municipality, claiming damages for wrongful dismissal. The learned Assistant Judge held that the suit was barred by limitation under

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the provisions of section 167 of the District Municipal Act. That section provides that :—

“No suit shall be commenced against any Municipality.....for anything done, or purporting to have been done, in pursuance of this Act, without giving to such Municipality.....one month's previous notice in writing of the intended suit and of the cause thereof, nor after six months from the date of the act complained of.”

The suit was instituted more than six months after the dismissal of the plaintiff by the Municipality, and the question raised in the preliminary issue was whether the dismissal was something done, or purporting to have been done in pursuance of the Act. The learned Assistant Judge held that it was done in pursuance of the Municipal Act, and that, therefore, the suit was out of time.

On appeal to the District Judge that decision was reversed and the case was remanded for hearing on the merits. The learned District Judge said :—

“I hold that section 167 of the Municipal Act does not cover this case. That section is applicable in cases relating to anything done or purporting to have been done in pursuance of the Act. The test to be applied is not the nature of the suit or the subject matter, but whether the cause of action was or was not connected with the exercise of the statutory powers conferred upon the Municipality. The employment and dismissal of servants are not acts done in pursuance of the Act within the meaning of this section.”

We are unable to agree with that decision. Section 46 of the District Municipal Act (Bom. Act III of 1901) provides that :—

“Every Municipality shall, as soon as conveniently may be after the constitution thereof, make and may from time to time alter or rescind rules, but not so as to render them inconsistent with this Act.....determining.....the staff of officers and servants to be employed by the Municipality and the respective designations, duties.....&c., of such officers and servants.....and subject to the provisions of section 184, determining the mode and conditions of appointing, punishing or dismissing any such officer or servant.”

Section 2 of the Act provides that all Municipalities constituted and rules made under the repealed District

Municipal Acts of 1873 and 1884 shall, so far as may be, be deemed to have been constituted and made under this Act. Therefore, the rules which were in force at the time of the dismissal, which were rules made under the Act of 1884, must be deemed to have been made in pursuance of the duty cast upon the Municipality under section 46 of the Municipal Act of 1901.

Now rule 98 of the rules of 1884 provides that "the Municipality alone shall have power to appoint, reduce or dismiss the Municipal Secretary," and certain earlier rules, namely, 77 and following rules, prescribe that the Secretary shall be one of the staff of officers to be employed by the Municipality, and define his duties. The Municipality, therefore, have the power and the duty in a proper case to dismiss the Municipal Secretary. That duty is imposed upon them, and that power is given to them by the Act or the statutory rules deemed to be made under the Act. That being so, when they exercised such power by purporting to dismiss this Secretary, that is, in our opinion, an act done or purporting to have been done in pursuance of the Act within the meaning of section 167. It does not appear to us that the decisions referred to in argument, namely *Myers v. Bradford Corporation*<sup>(1)</sup> or *Lyles v. Southend-on-Sea Corporation*,<sup>(2)</sup> give us any assistance in the decision of the particular question before us. We, therefore, set aside the order of remand, and restore the decree of dismissal passed by the Assistant Judge with costs throughout.

*Order set aside.*

J. G. R.

(1) [1915] I. K. B. 417.

(2) [1905] 2 K. B. 1.