

Manickam Vs. the District Board, Represented by Its President

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Court : Chennai

Decided On : Aug-18-1941

Reported in : AIR1942Mad321; (1942)1MLJ195

Appellant : Manickam

Respondent : The District Board, Represented by Its President

Judgement :

Venkataramana Rao, J.

1. This second appeal arises out of a suit by the plaintiff for a declaration that the resolution of the Taluk Board of Musiri dated 15th February, 1933 by which the establishment charges fixed by the Budget for 1933-1934 in the sum of Rs. 5,130 were reduced to Rs. 3,270 and the resolution dated 11th May, 1933 reducing the plaintiff's salary from Rs. 70 to Rs. 47 a month are both illegal and that he is entitled to be reinstated in the office and for the recovery of the difference between Rs. 70 and Rs. 47 from 1st April, 1933 up to 6th June, 1934. The basis of the claim of the plaintiff is that both the said resolutions were passed in contravention of Section 67 of the Local Boards Act.

2. Section 67 runs thus:

(1) The sanction of the Local Board shall be obtained for all proposals for fixing or altering the number, designations and grades of its officers and servants and the

salaries, fees and allowances payable to them.

(2) Such proposals shall be taken into consideration by the Local Board only at the instance of its President and the Local Board may sanction them with or without modifications:

Provided that no proposal adversely affecting any officer or servant of the Local Board who has been in the permanent service of the Local Board for more than five years and is drawing a salary of not less than fifty rupees per mensem shall be considered, except at a special meeting convened for the purpose and no such proposal shall be given effect to, unless assented to by at least one-half of the members then on the Board.

It will be seen from the provisions of this section that before a reduction of the salary of an officer of the Board can be attempted, the proposal for such a reduction should be sanctioned by the Local Board and that such a proposal should have been initiated by the President of the Board, and if that officer has been in service for more than five years and is drawing a salary of not less than Rs. 50, such a reduction can only be passed at a special meeting convened for the purpose and has to be assented to by at least one-half of the members of the Board. The case for the plaintiff is that the resolution dated 15th February, 1933 was sanctioned by the Board without the proposal having been initiated by the President. Both the lower Courts find this as a fact and it follows from this that the said resolution is illegal, being in contravention of Section 67 of the Act.

3. So far as the resolution of 11th May, 1933 is concerned, the case for the plaintiff is that it is illegal for more reasons than one. Firstly, the resolution was based on the resolution dated 15th February, 1933, and as this was an illegal resolution, that resolution also must be declared to be illegal. Further, the meeting at which that resolution was adopted was not convened for the special purpose of reducing the salary of the plaintiff and moreover the resolution was not adopted on a proposal made by the President as required by Clause (2) of Section 67. The learned District Munsif was of opinion that the said special meeting was not convened for the said purpose and also that the proposal for such a reduction was not initiated by the President. The learned Subordinate Judge has taken a different view and

held that the resolution was a valid one and passed in compliance with the provisions of Section 67 of the Act. This finding is now canvassed by Mr. K. S. Sankara Aiyar, the learned Counsel for the plaintiff. He contends that the resolution dated 11th May, 1933 is illegal because it was dependent on the prior resolution dated 15th February, 1933. There can be no doubt that it was in consequence of the resolution dated 15th February, 1933 that a reduction of the salaries of various officers was made. But it does not follow from this that the resolution of 11th May, 1933 is illegal. On a fair interpretation of Section 67 of the Act it will be seen that the validity of a resolution passed under the proviso to the section is not dependent upon the validity or the invalidity of a resolution passed under Clause (1) of Section 67. Section 67 (1) is general. It may be that the Local Board may pass a resolution by which it may fix or alter the designation and grade of its officers and servants or the salaries payable to them, and what in fact was sought to be done by the resolution dated 15th February, 1933 Was a reduction in the establishment charges which would naturally result in a revision or alteration of the salaries of all or some of the officers concerned, but it does not follow that such a resolution necessarily involves the reduction of the salary of any particular officer. It may be open to the Board to say that only the salaries of particular officers should be reduced but not the salaries of the others. Therefore the question of the validity of a resolution by which the salary of an officer of five years' standing and drawing not less than fifty rupees per mensem is reduced would not necessarily depend upon any general resolution passed by the Local Board by which it resolves to reduce the salaries of its officers in general. What happened in this case is this. A special meeting was summoned on the 11th May, 1933 and held at 3 p.m., in the office of the Taluk Board, at which 22 members of the Local Board were present, and a unanimous resolution was passed by which the salaries of several officers including that of the plaintiff were reduced. The question therefore for decision is, is this resolution illegal as being in contravention of Section 67 of the Act?

4. On a reference to the resolution it will be seen that it was passed at a special meeting. It is also clear from the terms of the resolution that there was a note of the President proposing a reduction of the clerical staff by adopting a certain percentage. The proposal therefore emanated from the President, but it does not

appear from the resolution itself that the special meeting was convened for the purpose of reducing the salaries. What Mr. Sankara Aiyar contends is that two hours earlier there was a meeting of a special sub-committee which was appointed by the resolution dated 15th February, 1933 to revise the budget. That committee considered the question of reduction and approved the note of the President, and it was the resolution of that subcommittee that was actually passed at the special meeting. Therefore he contends that no notice could have been given to the members that a special meeting was being convened for the purpose of reducing the salaries of the plaintiff and other officers who were drawing more than Rs. 50 per month.

5. It is true that what was done was the approval of the resolution of the sub-committee, but what the sub-committee did approve was the note of the President and in fact the resolution passed on the 11th May, 1933 at 3 p.m., does refer to the note of the president. The special meeting itself must have been summoned some days earlier. There is absolutely no evidence on the part of the plaintiff to show that the necessary notice was not given. It is incumbent on the plaintiff who has come to Court for a declaration that a particular resolution of the Local Board is illegal, to give prima facie evidence of the specific irregularity or illegality which he complains of; but nothing has been done in this case beyond merely filing the resolution. The resolution of 11th May, 1933 does not prima facie establish that no such notice was given. Mr. Sankara Aiyar strongly urged that his client gave notice to the Taluk Board to produce notice calling for the meeting of 11th May, 1933 and that the Board did not produce it, and asked me to draw an adverse inference from its non-production. If the onus really vested on the Taluk Board to establish the legality of the resolution, I should certainly agree with the contention of Mr. Sankara Aiyar; but the onus of establishing in the first instance that the resolution was not in compliance with the statute was on the plaintiff, who has failed to adduce prima facie evidence. It seems to me that apart from any question of the onus of proof the Taluk Board should have produced the notice. It is the duty of a public body like the Taluk Board not to withhold any document in its possession and to place before the Court notices of the meeting and other documents connected with the passing of the resolution, and to show beyond all doubt that what they did was fair and regular and to assist the Court in arriving at a correct

decision. But from the fact that the Taluk Board has not chosen to produce the notice I am not prepared to draw an adverse inference against it. It is not suggested that the Taluk Board was actuated by ill-will towards the plaintiff. I find that the Taluk Board took the precaution of summoning a special meeting, because the proviso to S, 67 enacts that a special meeting should be convened for considering the question of the reduction of the salaries of the Board's officers who have put in a service of more than five years and whose salary is not less than rupees fifty a month. I am inclined to presume that the object of summoning that meeting was for that purpose. I have already found that the proposal has emanated from the president. The Taluk Board must be deemed to have complied with the prescribed procedure in passing the resolution and in the absence of any evidence to show that this was not the case. I agree with the learned Subordinate Judge that the resolution passed by the Taluk Board was legal.

6. Mr. Sankara Aiyar next challenges the validity of the resolution on the ground that it seeks to give effect to the reduction from a date anterior to the date of the passing of the resolution, i.e., from 1st April, 1933.

7. This contention is perfectly sound. There is no jurisdiction in the Taluk Board to give retrospective effect to the resolution. But the fact that the Board seeks to give retrospective effect to it does not render the resolution illegal in toto; only the Board cannot give effect to the resolution from 1st April, 1933.

8. The next point urged by Mr. Sankara Aiyar is that notice of this reduction was given to his client on the 22nd May, 1933 and that his client's salary can only be reduced after the expiry of three months from the date of the said notice under Rule 19 framed by the Local Government in this behalf. The said rule runs thus:

Unless it contains an express statement to the contrary, an order for the abolition of an appointment or for the reduction of emoluments of an. appointment shall not be brought into operation before the expiry of three months after notice has been given to the officer or servant whose services are to be dispensed with on such abolition or reduction.

The Taluk Board relies upon the words 'unless it contains an express statement to the contrary' and contends that the fact that it chose to express in its resolution that the resolution should have effect from 1st April, 1933 would amount to a 'statement to the contrary' within the meaning of that rule. I am not inclined to agree with this contention. I have already expressed the opinion that the order of the Taluk Board giving retrospective effect to its resolution is illegal; such an illegal order cannot be availed of for the purpose of seeking the benefit of the exception contained in the rule. What the Board should have done is that it should have expressed in the resolution itself that the order would be given immediate operation, i.e., from the date of service of notice. It has not done so and the Board is not therefore entitled to reduce the plaintiff's salary until the expiry of three months from the date on which he was served with notice. The result is that the plaintiff will be entitled to draw his salary at Rs. 70 a month from 1st April, 1933 until the expiry of three months from 22nd May, 1933. I must therefore set aside the decree of the lower Court and give a decree in favour of the plaintiff for Rs. 27-1-2. In the circumstances of this case I direct each party to bear his own costs throughout.

9. Leave to appeal is refused.