

(5) Again, the judgment of B.R. Tuli J., in *Puran and others v. The State of Haryana and others* (2), obliquely lends support to the proposition that reservation must be prescribed under rule 16(ii) but there is no discussion on the subject.

(6) The point in question has been dealt with only by R. S. Sarkaria J. in *Bool Singh v. State of Punjab and others* (3), where it is observed that "prescription of a scale by a mere executive order, as distinguished from a statutory rule, is not valid prescription of the scale within the contemplation of rule 16(ii), and has, therefore, to be ignored.

(7) We are in respectful agreement with the view of Sarkaria J. in the aforesaid case and must hold that the scale for reservation has to be prescribed in the rules itself and not that the same can be fixed by executive instructions.

(8) For the foregoing reasons, there is no merit in the appeal which stands dismissed with no order as to costs.

K. S. K.

LETTERS PATENT APPEAL

Before D. K. Mahajan and H. R. Sodhi, JJ.

THE MUNICIPAL COMMITTEE, LUDHIANA—;—Appellant.

versus

SURINDER KUMAR,—Respondent.

Letters Patent Appeal No. 568 of 1970.

September 23, 1971

Punjab Municipal Act (III of 1911)—Section 35—Judgment of a civil Court against a Municipal Committee—Committee passing no resolution to file appeal against the judgment—Appeal filed at the instance of the Executive Officer acting under section 35—Municipal Committee ratifying the action of the Executive Officer—Such ratification—Whether bad in law—Resolution of the Municipal Committee for the ratification passed after the expiry of period of limitation for the appeal—Such appeal—Whether to be treated within time.

(2) 1969 P.L.J. 47.

(3) 1968 C.L.J. (Pb. & Hr.) 911.

The Municipal Committee, Ludhiana v. Surrinder Kumar (Mahajan, J.)

Held, that the plain reading of section 35 of Punjab Municipal Act, 1911, shows that an Executive Officer is not competent to order the filing of appeal against the judgment of a civil Court against the Municipal Committee, when the Committee does not pass a resolution for filing the appeal. There is, however, no legal prohibition which bars the filing of an appeal on behalf of the Municipal Committee, but the decision to file the appeal has to be that of the Municipal Committee. If an unauthorised appeal filed on behalf of the Municipal Committee is later on adopted by a resolution of the Municipal Committee specifically stating that they adopt the act of the unauthorised person as their own act, that would surely amount to ratification and the ratification would not be bad in law.

(Para 5)

Held, that the notification by the Municipal Committee of the action of the Executive Officer in filing the appeal on behalf of the Committee has to be within the period of limitation prescribed for filing the appeal. If the ratification is outside limitation, it cannot cure the bar of limitation and the appeal filed by the Executive Officer cannot be treated to be within time.

(Para 6)

Letters Patent Appeal from the decree of the Court of the Hon'ble Mr. Justice D. S. Tewatia, dated 7th day of May, 1970, passed in R.S.A. 986/69, affirming that of Shri S. S. Dewan, 1st Additional District Judge, Ludhiana, dated the 19th April, 1969, which affirmed that of Shri A. C. Rampal, Sub-Judge, 1st Class, Ludhiana, dated the 18th December, 1968, and granted a decree to the plaintiff for declaration to the effect that he is entitled to reinstatement in the record of defendant from the time he was not given work and has remained continuously in service and is granted a mandatory injunction against the defendant to reinstate him as prayed and pay the salary and other emoluments attached to his post throughout with no order as to costs.

H. S. Doabia and T. S. Doabia, Advocates, for the appellant.

A. L. Bahri and Muneshwar Puri, Advocates, for the respondent.

JUDGMENT

Judgment of this Court was delivered by:—

MAHAJAN, J.—(1) This is an appeal under Clause 10 of the Letters Patent and is directed against the decision of a learned Single Judge of this Court affirming on appeal the decision of the lower appellate Court dismissing the appeal as incompetent.

(2) A suit for declaration was filed by the plaintiff-respondent to the effect that he was entitled to reinstatement and consequential relief in the form of mandatory injunction to the effect that the order of dismissal passed against him was illegal. This suit was decreed by the trial Court. The defendant-Committee did not pass any resolution within the period of limitation to file an appeal against the judgment and decree of the trial Court. The Executive Officer, However, passed an order under section 35 of the Punjab Municipal Act on 27th of January, 1969. In pursuance of that order, an appeal was filed in the Court of the District Judge. When the appeal came up for hearing an objection was raised that the appeal was not competent because the Municipal Committee had not passed a resolution authorising the filing of the appeal and there was no occasion for the Executive Officer to act under section 35 of the Act. The learned Additional District Judge, who heard the appeal, came to the conclusion that the provisions of section 35 could not be utilised by the Executive Officer and as there was no resolution by the Municipal Committee, the appeal was incompetent. Accordingly, he rejected the appeal. Against this decision, an appeal was preferred to this Court. It was contended before the learned Single Judge:—

- (1) That the counsel, who was appearing for the Municipal Committee was authorised by the power of attorney to file an appeal and the appeal being a re-hearing of the suit, the counsel had the authority to prefer the appeal.
- (2) That the Executive Officer was invested with a legal authority under section 35 to act for the Municipal Committee and his order directing the appeal to be filed makes it competent.
- (3) That in any case, the Municipal Committee by its resolution dated 28th March, 1969, approved the filing of the appeal, and if there was any irregularity, it was cured.

(3) All these three contentions were examined by the learned Single Judge and he came to the conclusion that there was no merit in either of them. The result was that the appeal was dismissed. Against this decision, the present appeal under Clause 10 of the Letters Patent has been filed by the Municipal Committee.

(4) The first contention of Mr. Doabia, learned counsel for the appellant, is that by the resolution of the Municipal Committee, dated

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28th March, 1969, the unauthorised act of the Executive Officer in filing the appeal, if at all it was unauthorised, was ratified and by the act of ratification, the appeal should be deemed to have been presented by a properly authorised agent. Mr. Bahri, learned counsel for the respondent, on the other hand, contended that the act of the Executive Officer was an illegal act and, therefore, there could be no ratification of that act. The rule seems to be firmly settled that an illegal act cannot be ratified.

(5) The short question that requires determination in the present case is whether the act of filing the appeal is an unauthorised act. It appears to us that there is no legal prohibition which bars the filing of an appeal on behalf of the Municipal Committee, but the decision to file the appeal has to be that of the Municipal Committee and if an unauthorised appeal filed on behalf of the Municipal Committee is later on adopted by a resolution of the Municipal Committee specifically stating that they adopt the act of the unauthorised person as their own act, that would surely amount to ratification and the ratification would not be bad in law. The cases on which Mr. Bahri has placed reliance are cases where the act ratified was illegal *per se*. Therefore, it was rightly held in those cases that the ratification itself would be illegal.

(6) However, there is another principle of law, namely that the ratification is to be within limitation. If the ratification is outside limitation, it cannot cure the bar of limitation. In the present case, admittedly the act of ratification, even if we accept the resolution of 28th March, 1969, as ratification by the Municipal Committee of the act of the Executive Officer in filing the appeal, is beyond limitation and in view of the consistent course of decisions in *Punjab Zamindara Bank v. Madan Mohan* (1), *Yar Mohammad v. Prayag* (2), and *Kirpal Chand v. The Traders Bank Ltd.* (3), there is no option but to hold that the appeal would be barred by limitation.

(7) Faced with this situation, Mr. Doabia has been driven to the contention that we should condone the delay in filing the appeal particularly when there was a conflict of judicial opinion whether the act of a stranger in filing the appeal on behalf of the Municipal

(1) A.I.R. 1936 Lah. 321.

(2) 1952 A.L.J. 110.

(3) A.I.R. 1954 J. & K. 45.

Committee can be ratified by the Municipal Committee. This argument would have been valid if the ratification was defective. In the present case, we have already held that the ratification was valid, but on the question that ratification has to be within limitation there is no conflict of judicial opinion. Therefore, it cannot be held that there was any sufficient cause for the Municipal Committee in not ratifying the act of the Executive Officer in filing the appeal within the period of limitation. On the facts of this case, no sufficient cause has been made out, to condone the delay after the period of limitation had expired.

(8) Mr. Doabia, strongly relied on the decision of Dalip Singh, J. in *Allah Bakhsh v. Municipal Committee of Rohtak* (4). So far as this decision is concerned, it does not help the learned counsel because in this case the learned Judge came to the conclusion that there was a conflict of rulings on the point. The conflict was as to whether an invalid *Vakalatnama* could be validated later on. In the present case, we are not concerned with the invalidity of the *Vakalatnama*, and the considerations which weighed with Dalip Singh J., are not germane so far as the present matter is concerned.

(9) There is another reason why the benefit of section 5 of the Limitation Act cannot be granted to the Municipal Committee. The Municipal Committee was aware that the decision in the present suit had been rendered against it. The matter was tabled before the Committee and yet for one reason or another, it did not, in spite of the fact that a number of meetings were held, tackle this matter. Therefore, it cannot be said that there was any *bona fide* mistake on the part of the Municipal Committee, which prevented it from filing the appeal in the Court of the District Judge.

(10) Mr. Doabia, then strongly contended that there was no necessity for the Municipal Committee to pass a resolution for filing the appeal. The act of the Executive Officer in authorising the appeal to be filed was enough. For that, the learned counsel relies on section 35 of the Municipal Act, which is in the following terms:—

“35(1) On the occurrence or threatened occurrence of any event involving or likely to involve extensive damage to property or danger to human life or grave inconvenience to the

(4) A.I.R. 1926 Lah. 223—92 I.C. 966.

public, the president or the Executive Officer or, in the absence of the president or during the vacancy of his office, a vice-president may, if in his opinion there is an emergency necessitating action before the matter can be considered by the committee, direct the execution of any such work or the doing of any such act which the committee is empowered to execute or do, as the emergency shall in his opinion justify or require, and may direct that the expense of executing such work or doing such act be paid from the municipal fund:

Provided that every such action taken under this section shall be reported to the committee at its next meeting.

- (2) The president or vice-president or the Executive Officer shall not act under this section in contravention of any order of the committee.
- (3) The president or in his absence or during the vacancy of his office a vice-president may prohibit, until the matter has been considered by the committee, the doing of any act which is in his opinion undesirable in the public interest: provided that the act is one which the committee has power to prohibit.
- (4) No direction given in this section shall be questioned in any court on the ground that the case was not one of emergency."

He also placed his reliance on *Bawa Bhagwan Dass v. Municipal Committee, Rupar* (5). One has merely to refer to the plain language of section 35 to negative this contention. In term, section 35 does not apply to the present contingency and we are unable to accept the contention that the matter is covered by the decision in *Bawa Bhagwan Dass's case*. That case, on the contrary, goes dead against the contention of the learned counsel.

(11) For the reasons recorded above, this appeal fails and is dismissed. There will be no order as to costs.

K. S. K.