Before R. N. Mittal, J.

POST GRADUATE INSTITUTE OF MEDICAL EDUCATION AND RESEARCH, CHANDIGARH,—*Appellant.*

versus

DR. J. S. GUPTA AND OTHERS,—*Respondents.*

Regular First Appeal No. 93 of 1974.

June 28, 1983.

Contract Act IX of 1872)—Section 74—Punjab Civil Services Rules, Volume I Part-I—Rule 1.3—Bond executed by employee to serve an institution for a certain period—Bond further specifying quantum of pre-estimated damages in case of the breach of the contract of service—Employee violating the contract by not serving in the institution—Such institution—Whether entitled to recover the damages stipulated in the bond—Punjab Cilvil Services Rules applicable to the employee—Institution—Whether can compel the employee to execute the bond—Suit filed on behalf of the institution by a person not duly authorised—Act of filing of suit subsequently ratified by a competent body after expiry of limitation for filing suit—Such ratification—Whether to operate retrospectively.

Held, that if parties to a contract named a penal amount as becoming due on breach of the contract, the real damages not exceeding the penal amount can be recovered. On the other hand, if the amount has been determined by them as fixed measures of damages to avoid any future difficulty to ascertain it, the amount so named can be recovered. The use of the word penalty or liquidated damages in the contract is not decisive factor to reach the conclusion that the amount claimed is penalty or liquidated damages. Such a question has to be determined in each case after taking into consideration the facts of that case. It is generally seen that in some cases of contracts it is not possible for the Court to estimate damages whereas there are some in which damages can be calculated in accordance with well-known principles. In the former cases, the sum named by the parties, if it represents the genuine pre-estimate of damages, may be considered as a reasonable compensation, while in the latter cases, the loss suffered is required to be proved. Therefore the association of a professor with the Institution is a great asset and after he leaves it no amount of compensation can make up the loss. As such, the amount mentioned in the bond cannot be said to be excessive or unconscionable.

(Para 10 and 12).

Held, that Rule 1.3 of the Punjab Civil Services Rules, Volume I, Part I, provides that when in the opinion of the competent

authority, a special provision inconsistant with the Rules is required with respect to any conditions of service, the authority may enter into an agreement in that regard with the employee. As such the competent authority, keeping in view the exigencies of service, can enter into an agreement which can even be inconsistent with the rules. Therefore, the employee of the institution can be asked to execute a bond for service in the institution.

(Para 21)

Held, that a principal can rectify the unauthorised action of his agent. However, if the ratification is beyond limitation, it can not cure the bar of limitation.

(Para 19)

Regular First Appeal from the judgment and decree of the Court of the Sub Judge 1st Class, Chandigarh dated the 29th day of November, 1973, dismissing the suit of the plaintiff and leaving the parties to bear their own costs.

S. K. Sharma, Advocate, *for the appellant.*

R. K. Aggarwal, Advocate, *for the respondent.*

JUDGMENT

Rajendra Nath Mittal, J.

(1) This is a first appeal against the judgment and decree of the Subordinate Judge Ist Class, Chandigarh, dated 29th November, 1973, by which the suit of the plaintiff was dismissed.

(2) Briefly, the facts are that defendant No. 1 was working as Associate Professor of Opthalmology with the plaintiff. He applied for four months' leave for going abroad in July, 1969, which was given to him on execution of a bond that he would serve the Institute for a period of four years after expiry of the leave or pay a sum of Rs. 45,000 to the Institute. Consequently, he, along with defendants Nos. 2 and 3 as sureties, executed a bond dated 5th July, 1969, in favour of the plaintiff. It is averred that defendant No. 1 did not resume his duty on expiry of the leave. Hence the suit for recovery of Rs. 45,000 by the Institute.

(3) The defendants contested the suit and *inter alia* pleaded that the suit had not been filed by a duly authorised person, that the plaintiff could not legally get a bond from the defendants

and that the plaintiff did not suffer any loss on account of not resuming the duty by defendant No. 1 after expiry of the leave. They took some other pleas, those do not survive in the appeal. Before me issue Nos. 1, 3, 11 and 13, which are as follows, have been contested by the parties :—

1. Whether the suit has been filed by a duly authorised person ? OPP.

* * * *

3. Whether the plaintiff could legally get the bond executed from the defendants and whether it is permitted by law and service conditions of defendant No. 1 and, if not, what is its effect ? OPP.

* * * *

11. Whether any loss has been caused to the plaintiff by defendant No. 1 not resuming his duty after the expiry of the leave and, if so, its quantum ? OPP.

* * * *

13. Whether the plaintiff is entitled to recover any amount from the defendants and, if so, from which of them ? OPP.

(4) The trial Court decided issues Nos. 1 and 3 in favour of the plaintiff and issues Nos. 11 and 13 against it. In view of the findings on issues Nos. 11 and 13, it dismissed the suit. The plaintiff has come up in appeal to this Court.

(5) The first question that arises for determination is as to whether the plaintiff is entitled to recover the amount of the bond from the defendants. The contention of Mr. Sharma is that the amount of Rs. 45,000 mentioned in the bond is not a penal amount but it represents the pre-estimated damages and, therefore, the plaintiff-appellant is entitled to recover it under section 74 of the Indian Contract Act, 1872, hereinafter referred to as the Act. On the other hand, the learned counsel for the respondents argues that the appellant did not suffer any damage and, therefore, it is not entitled to recover any amount from the respondents.

(6) I have heard the learned counsel for the parties at a considerable length. In order to determine the question, it will be advantageous to read section 74 of the Act, which is as follows:—

> "74. Compensation for breach of contract where penalty stipulated for.
>
> When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of the penalty, the party comp'aining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.
>
> *Explanation.*—A stipulation for increased interest from the date of default may be stipulation by way of penalty.
>
> *Exception.*—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law or under the orders of the Central Government or of any State Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument to pay the whole sum mentioned therein.
>
> *Explanation.*—A person who enters into a contract with Government does not necessarily thereby undertake any public duty or promise to do an act in which the public are interested."

(7) The section has been interpreted by the Supreme Court in *Sir Chunilal V. Mehta etc.* v. *Century Spinning and Manufacturing Co. Ltd.*, (1), *Fateh Chand* v. *Balkishan Dass*, (2), *and Maula Bux* v. *Union of India*, (3).

(8) In Sir *Chunilal's case* (supra), there was a clause in the agreement that if the appellant was deprived of the office of

(1) A.I.R. 1962 S.C. 1314.
(2) A.I.R. 1963 S.C. 1405.
(3) A.I.R. 1970 S.C. 1955.

Agents, it shall be entitled to receive from the Company as compensation or liquidated damages for the loss of such appointment a sum equal to the aggregate amount of the monthly salary of not less than Rs. 6,000 which the appellant would have been entitled to receive from the company for and during the whole of the then unexpired period. The company terminated the agency and thereupon the appellant filed a suit for recovery of the damages. The learned trial Judge granted a decree calculating the amount at the rate of Rs. 6,000 per month for the unexpired period. The plaintiff filed an appeal before the Supreme Court. J. R. Mudholkar, J., while speaking for the Court, observed that the right to claim liquidated damages is enforceable under section 74 of the Contract Act and where such a right is found to exist no question of ascertaining damages really arises, where the parties have deliberately specified the amount of liquidated damages there can be no presumption that they at the same time, intended to allow the party who has suffered by the breach to give a go-by to the sum specified and claim instead a sum of money which was not ascertained or ascertainable at the date of the breach. Consequently, the appeal was dismissed after observing that the appellant should not be entitled to get anything more than Rs. 6,000 per month by way of compensation.

(9) In *Fateh Chand's case* (supra), the scope of section 74 of the Act was dealt with and it was held that the section is an attempt to eliminate somewhat elaborate refinements made under the English common law in distinguishing between stipulations providing for payment of liquidated damages and stipulations in the nature of penalty. Under the common law, a genuine pre-estimate of damages by mutual agreement is regarded as a stipulation naming liquidated damages and binding between the parties; a stipulation in a contract *in terrorem* is a penalty and the Court refuses to enforce it, awarding to the aggrieved party only reasonable compensation. The Legislature has sought to cut across the web of rules and presumptions under the English common law, by enacting a uniform principle applicable to all stipulations naming amounts to be paid in case of breach, and stipulations by way of penalty. Regarding the measure of damages, it was held therein as follows:—

> "Section 74 of the Indian Contract Act deals with the measure of damages in two classes of cases (i) where the contract names a sum to be paid in case of breach and

(ii) where the contract contains any other stipulation by way of penalty.....The measure of damages in the case of breach of a stipulation by way of penalty is by section 74 reasonable compensation not exceeding the penalty stipulated for. In assessing damages the Court has, subject to the limit of the penalty stipulated, jurisdiction to award such compensation as it deems reasonable having regard to all the circumstances of the case. Jurisdiction of the Court to award compensation in case of breach of contract is unqualified except as to the maximum stipulated; but compensation has to be reasonable, and that imposes upon the Court duty to award compensation according to settled principles. The section undoubtedly says that the aggrieved party is entitled to receive compensation from the party who has broken the contract whether or not actual damage or loss is proved to have been caused by the breach. Thereby it merely dispenses with proof of 'actual loss or damage'; it does not justify the award of compensation when in consequence of the breach no legal injury at all has resulted because compensation for breach of contract can be awarded to make good loss or damage which naturally arose in the usual course of things, or which the parties knew when they made the contract, to be likely to result from the breach.

* * * *

In all cases, therefore, where there is a stipulation in the nature of penalty for forfeiture of an amount deposited pursuant to the terms of contract which expressly provides for forfeiture, the Court has jurisdiction to award such sum only as it considers reasonable, but not exceeding the amount specified in the contract as liable to forfeiture. We may briefly refer to certain illustrative cases decided by the High Courts in India which have expressed a different view."

In *Maula Bux's case* (supra), the following observations of their Lordships be read with advantage :—

".....in every case of breach of contract the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree and

the Court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequence of the breach of contract. But the expression 'whether or not actual damage or loss is proved to have been caused thereby' is intended to cover different classes of contracts which come before the Courts. In case of breach of some contracts it may be impossible for the Court to assess compensation arising from breach, while in other cases compensation can be calculated in accordance with established rules. Where the Court is unable to assess the compensation, the sum named by the parties if it be regarded as a genuine pre-estimate may be taken into consideration as the measure of reasonable compensation, but not if the sum named is in the nature of a penalty. Where loss in terms of money can be determined, the party claiming compensation must prove the loss suffered by him."

Maula Bux's case (supra) was followed in another Supreme Court case in *Union of India* v. *Rampur Distillery & Chemical Co. Ltd.*, (4).

(10) From a reading of the section and the observations of the Supreme Court, it emerges that if parties to a contract named a penal amount as becoming due on breach of the contract, the real damages not exceeding the penal amount can be recovered. On the other hand, if the amount has been determined by them as fixed measure of damages to avoid any future difficulty to ascertain it, the amount so named can be recovered. The use of the word penalty or liquidated damages in the contract is not decisive factor to reach the conclusion that the amount claimed is penalty or liquidated damages. Such a question has to be determined in each case after taking into consideration the facts of that case. It is generally seen that in some cases of contracts it is not possible for the Court to estimate damages whereas there are some in which damages can be calculated in accordance with well-known principles. In the former cases, the sum named by the parties, if it represents the genuine pre-estimate of damages, may be considered as a reasonable compensation, while in the latter cases, the loss suffered is required to be proved.

(4) A.I.R. 1973 S.C. 1098.

(11) Adverting to the facts of the instant case, respondent No. 1 was the Associate Professor and Head of the Department of Ophthalmology in the Post Graduate Intitute. The Institute is carrying on the medical research and running the hospital for the benefit of the general public. It is not an earning department of the Government. On the other hand, the Government is spending crores of rupees for maintaining it. In the Institute, which is prestigious and well-known one, highly qualified and eminent doctors are appointed as Heads of Departments. If a doctor leaves the Institute, it is not possible to estimate the loss suffered by it in terms of money. Dr. P. N. Chhuttani, Director of the Institute, deposed that it was a colossal loss to the Institute when Dr. Gupta did not turn up after the expiry of the leave. He was the Head of the Institute and the best person to depose about the effect on the Institute after Dr. Gupta left it. He is supported by Dr. I. S. Jain, who headed the Department of Ophthalmology after Dr. Gupta left it. Both of them further stated that it was not possible to measure the damages in terms of money. They are eminent doctors and their statements cannot be disbelieved.

(12) It has already been observed that in case the damages cannot be estimated, the amount named in the agreement as damages can be recovered if these are genuine and pre-estimated. The association of Dr. Gupta with the Institute was a great asset and after he left it no amount of compensation could make up the loss. The amount mentioned in the bond also does not appear to be excessive and unconscionable. Therefore, I am of the view that the amount of Rs. 45,000 cannot be held to be not genuine and pre-estimated damages.

(13) A similar case came up before the Court in (*The Atlas Cycle Industries, Sonepat Ltd.* v. *Shri B. S. Khurana, Super Sales, India P. Ltd.*, (5). In that case, on 17th March, 1954, the parties executed an agreement wherein it was provided that B. S. Khurana would serve the Company for a period of six years, that he would deposit a sum of Rs. 2,500 in the Company as security and that in the event he left the service during that period, the Company would be entitled to forfeit the security and recover six months salary as fixed damages. He left the service during the period of contract. At that time he was drawing Rs. 830 per mensem. The plaintiff forfeited the security and filed a suit for recovery of Rs. 4,980 as liquidated

(5) R.S.A. 445 of 1973 decided on 20-8-1982.

damages. The trial Court dismissed the suit of the plaintiff. On appeal, the first appellate Court affirmed the judgment of the trial Court. In second appeal, the learned Judge followed *Maula Bux's case* (supra) and came to the conclusion that it was not possible for the Court to assess compensation arising from the breach. Therefore, the sum named by the parties being a genuine pre-estimate was the only measure of reasonable compensation. Consequently, the appeal of the plaintiff was accepted and the suit decreed.

(14) Mr. Aggarwal, learned counsel for the respondents, made a reference to *Satyanarayan Amolakchand Bhutt* v. *Vithal Narayan Jamdar*, (6), and *Pasalapudi Brahmayya and another* v. *Teegala Gangaraju*, (7). In the former case, the plaintiff and the agent of the defendant entered into a contract by which the latter agreed to supply two thousand bags of saw dust within four months at the rate of Re. 1 per bag. It was further agreed that in case there was breach of contract by the defendant, he would be liable to pay Rs. 1,000 as damages. The learned Judge while dealing with the amount of Rs. 1,000 said that was not a pre-estimate, by the parties, of damages, as the total price that would have been payable at the rate of Re. 1 per bag by the plaintiff to the respondent for the entire quantity would be Rs. 2,000. In case the defendant supplied 1,999 bags of saw dust and failed to supply one bag, there would be undoubtedly be a breach of contract on the part of the defendant and under the contract it stands the defendant would be liable to pay Rs. 1,000 as compensation to the plaintiff. That would be entirely disproportionate to the injury sustained by the plaintiff. The learned Judge consequently held that it would, therefore, follow that the figure specified in the contract was fixed not as a pre-estimate by the parties of the damages which the plaintiff would suffer by reason of the breach but *in terrorem*. In *Pasalapudi Brahmayya's case* (supra), there was a contract of service between the plaintiff and the defendants by which the latter agreed to serve the plaintiff as servants. It was further agreed that if the servants absented themselves for a period exceeding twelve days in the year, one of them would pay Re. 1 per day and the other Re. 0-8-0 per day. Both of them absented themselves for more than twelve days and the plaintiff claimed an amount of Rs. 91 and odd from them by way of suit. In the facts and circumstances of the case, the Court came to the conclusion that the plaintiff did not

(6) A.I.R. 1959 Bombay 452.
(7) A.I.R. 1963 A.P. 310.

suffer any damages and, therefore, he was not entitled to any compensation. Both the cases are distinguishable and, in my view, Mr. Aggarwal cannot derive any benefit from them.

(15) It is not disputed that respondents Nos. 2 and 3 were sureties of respondent No. 1. Therefore, I am of the view that the liability of respondents Nos. 2 and 3 is the same as that of respondent No. 1 and they are liable to pay the amount of bond alongwith respondent No. 1. Issues Nos. 11 and 13 are decided accordingly.

(16) Faced with that situation, Mr. Aggarwal challenged the finding of the trial Court on issue No. 1 and argued that the suit was not filed by a competent person. He submits that the Director of the Institute was not authorised to file the suit and, therefore, it was liable to be dismissed on this ground.

(17) I have heard the learned counsel for the parties and find force in the submission of Mr. Aggarwal. The learned trial Court, while coming to the conclusion that the suit was filed by a properly authorised person took into consideration the note, Exhibit P. 1, and held that the Director had been authorised by a resolution of the Governing Body of the Institute to file a suit against the defendants. The resolution of the Governing Body was not produced by the plaintiff. The note, Exhibit P. 1, is dated 6th August, 1970, and bears the signature of Dr. D. R. Bali. It is stated in the note that Dr. Gupta had wilfully absented himself from duty; that while considering Agenda item No. 2 of the meeting of the Governing Body held on 31st July, 1970, the matter was reviewed by the said Body and it was decided that legal proceedings should be instituted against Dr. Gupta. It is not mentioned in the note as to who had to initiate the proceedings. An objection had specifically been taken by the defendant that the suit had not been filed by a duly authorised person. In that situation, it became the duty of the plaintiff to produce the resolution of the Governing Body. Dr. Bali came in the witness box and stated that he was not asked by anybody to bring the agenda of the meeting dated 31st July, 1970. He, however, admitted that the record of the meetings of the Governing Body was maintained. It has not been shown that the original record had been lost. In this situation, it cannot be held on the basis of Exhibit P. 1 that the Governing Body had resolved to institute a suit against the defendant. Moreover, it is not mentioned even in the note that Dr. Chhuttani was authorised to institute the suit. It is well-settled that the corporate bodies can

act through resolutions. After taking into consideration all the aforesaid circumstances, I am of the opinion that the suit has not been filed by a properly authorised person and it was liable to be dismissed on this ground.

(18) Mr. Sharma, in view of this situation, sought to urge that the act of the Director had been ratified and adopted by the Institute,—*vide* resolution dated 22nd September, 1973, Exhibit P. 16. He submits that in view of the ratification, the initiation of the suit even if it was invalid in its inception became valid subsequently.

(19) This point was raised before the learned trial Court and was rejected by it on the ground that the ratification had been made after the expiry of the period of limitation and, therefore, it could not be said to be a valid ratification. Mr. Sharma has not been able to show that the reasoning of the learned trial Court was erroneous. The view taken by the Court is supported by the observations of this Court in (*The Post Graduate Institute of Medical Research and Education* v. *Shri Ved Parkash Mehta, etc.*), (8). The learned Judge observed that there was no dispute with the proposition that a principal can ratify the unauthorised action of his agent but there was also a further proposition of law well-settled that the ratification, so far as the law of ratification is concerned, could not be retrospective. In the aforesaid view, he relied upon a judgment in (*The Municipal Committee, Ludhiana* v. *Surinder Kumar*), (9). It was held by the Letters Patent Bench that the ratification was to be within limitation and if the ratification was outside limitation, it could not cure the bar of limitation. I am in respectful agreement with the abovesaid observations. Therefore, the ratification, in the present case, being beyond limitation does not cure the defect of institution of the suit by an authorised person. Consequently, I reverse the finding of the trial Court on issue No. 1.

(20 Mr. Aggarwal then challenged the finding of the trial Court on issue No. 3, which was found by it in favour of the plaintiff. He contended that the appellant could not get the bond executed from the respondents under the Punjab Civil Services Rules, which were applicable to respondent No. 1.

(8) R.S.A. 1485 of 1972 decided on 24-8-73.

(9) L.P.A. 568/70 decided on 23-9-71.

(21) I am not impressed with this submission of the learned counsel. The Governing Body of the plaintiff asked the defendant to execute the bond. There is no bar under the general law to get such a bond by an employer from its employee. Even under the Civil Service Rules, the bond could be obtained by the appellant from respondent No. 1 under Rule 1.3 of the Punjab Civil Services Rules, Volume I, Part I. It is provided in the said rule that when in the opinion of the competent authority, a special provision inconsistent with the Rules is required with respect to any conditions of service, the authority may enter into an agreement in that regard with the employee. In view of the aforesaid rule, in my view, the Governing Body could ask respondent No. 1 to execute a bond in favour of the plaintiff. In the above view, I find support from *Shri Surjit Singh* v. *Shri Som Dutt etc.*, (10), wherein the said rule was interpreted and it was held that a competent authority, keeping in view the exigencies of service, can enter into an agreement which can be even inconsistent with the rules. Consequently, I reject the submission of the learned counsel.

(22) In the result, I do not find any merit in the appeal but for different reasons. Consequently, I dismiss the same with no order as to costs.

H.S.B.

Before R. N. Mittal, J.

ANIL KUMAR,—*Appellant*

versus

AMRA RAM AND OTHERS,—*Respondents.*

Regular Second Appeal No. 1572 *of* 1975

September 12, 1983.

Punjab Pre-emtion Act (I of 1913)—*Section* 2(3)—*Tosham in the State of Haryana—Whether a town—Town—Meaning of—Sale of immovable property in Tosham—Whether pre-emptible.*

Held, that the word 'town' according to sub-section (3) of section (2) of the Punjab Pre-emption Act, 1913 means a place, if so declared

(10) 1973(1) S.L.R. 452.