

main benefit is in regard to fixation of pay under Article 156, C.S.R. which is intended to regulate pay on substantive appointment both to permanent and temporary posts. The words 'present substantive pay' occurring in Article 156, C.S.R., are intended to include 'substantive pay' in respect of a temporary post. Similarly, the period of interruption of service in the temporary post held substantively by duty in another post or by leave (other than extraordinary leave), counts for increment in the time scale applicable to the temporary post (*vide*,—Article 159, C.S.R.)

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For these reasons, I am of the opinion that as the plaintiff could not acquire a lien on a temporary post, he had no right to hold the same post for such time as the post was in existence. His appointment to a temporary post in a substantive capacity conferred certain privileges in regard to pay and leave but no right to hold the post for any particular length of time. The appeal must in the circumstances be dismissed; but having regard to the difficult nature of the case, I would leave the parties to bear their own costs.

Falshaw, J.—I agree.

Falshaw, J.

REVISIONAL CIVIL.

Before Bhandari, C. J.

THE MUNICIPAL COMMITTEE, PATHANKOT,—
Petitioner.

versus

ROSHAN LAL,—Respondent.

Civil Revision Application No. 361 of 1955.

Municipal Committee—Delegation of powers—Validity and extent of—Sanction accorded by a Municipal Committee to defend a suit filed against it—Whether fresh sanction to file an appeal against the decision of the trial Court necessary.

1956
Dec., 14th

Practice—Appeal—Whether appeal a continuation of the suit.

Held, that although it is not within the power of a Municipal Committee to delegate the legislative or discretionary functions which have been confined to its deliberate judgment and discretion, it has full power to delegate its ministerial, administrative and executive functions to agents. The power of a Municipal Committee to authorise the institution or defence of civil suits or actions is the same as is exercised by other corporations.

Held further, that a sanction accorded by a Municipal Committee to defend a suit against it is equivalent to a sanction accorded to the defence of the suit from the lowest to the highest Court. No fresh sanction to file an appeal is necessary.

Held also, that if a person prefers an appeal against an order of the trial Court he does not bring a new suit but merely continues the original suit, for appellate jurisdiction is nothing more than the authority of a superior tribunal to review, reverse, correct or affirm the decisions of an inferior Court or tribunal.

Petition under Article 227 of the Constitution of India, for revision of the order of Shri Guru Datta, District Judge, Gurdaspur, dated 1st August, 1955, affirming that of Shri Rajindar Lal, Rent Controller, Pathankot, dated the 15th of March, 1955, fixing the fair rent of the site in dispute to be rupee 1 P.M.

D. K. MAHAJAN, for Petitioner.

M. R. PUNJ, for Respondent.

JUDGMENT.

Bhandari, C. J. BHANDARI, C. J.—This petition raises the question whether the learned District Judge was justified in dismissing an appeal filed by the Municipal Committee of Pathankot on the ground that it had not authorised the filing of the appeal.

On the application of certain tenants the Rent Controller of Pathankot fixed the rent of certain vacant sites belonging to the Municipal Committee of Pathankot at Re. 1 per mensem per

site. One Munshi Ram, who held a general power of attorney from the Municipal Committee presented an appeal from the order, but an objection was promptly raised on behalf of the tenant that the appeal had not been properly presented as the Committee had passed no resolution authorising the filing of the appeal. The learned District Judge upheld this objection and dismissed the appeal holding that although Munshi Ram held a general power of attorney on behalf of the Committee and although he was authorised to prosecute the appeal, he was not authorised to decide whether the appeal should or should not be filed. The Committee has come to this Court in revision and the question for this Court is whether the learned District Judge has come to a correct determination in point of law.

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The judgment of the learned District Judge appears to be based on certain observations appearing in Notified Area Committee, *Okasa v. Kidar Nath and others* (1). In this case the Secretary of a Notified Area Committee brought suits against certain persons for recovery of rent. On objection being taken that the institution of the suits had not been sanctioned by the Committee it passed a resolution delegating its rights to the Secretary to decide whether suits shall or shall not be brought against any person and that the suits had been instituted in pursuance of that resolution. Dalip Singh, J., held that there was nothing in the Municipal Act which empowered a Municipal Committee to delegate its powers of deciding whether a suit should or should not be brought, that the suits in question were brought by the Secretary without reference to the Corporation, that the action of the Secretary was ratified by a resolution passed by the Committee after the suits were filed, that such ratification was of

(1) A.I.R. 1932 Lah. 388

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no avail as the suit must be decided to be good or bad on the day when it was instituted and consequently that the action of the Corporation was *ultra vires*.

I regret I am unable to endorse the view taken by the learned District Judge that no appeal can be presented on behalf of a Municipal Committee unless its presentation is expressly authorised by the Committee by means of an appropriate resolution. In the first place I have not been able to discover any support for the proposition that the power of deciding whether a suit should be instituted or defended is not delegable to a municipal officer or to some other person. Although it is not within the power of a Municipal Committee to delegate the legislative or discretionary functions which have been confined to its deliberate judgment and discretion, it has full power to delegate its ministerial, administrative and executive functions to agents. The power of a Municipal Committee to authorise the institution or defence of civil suits or actions is the same as is exercised by other corporations. In *Thompson on Corporations*, section 3,152, the learned author observes as follows:—

“A resolution of the board of directors is ordinarily not necessary to authorise the bringing and prosecution of a suit by the board. But it has been held that such a resolution was necessary in order to authorise a third person to use the name of the corporation. A resolution of the board of directors authorising actions is not necessary where such actions relate to the business of the corporation. So, a resolution of the board of directors is not required to show that the dismissal of the suit, brought in the

name of the corporation, was by proper authority; if the act be done by the agents or attorneys, no other proof or authority could be required."

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Secondly, it is significant that when Munshi Ram appeared before the Rent Controller to defend the case on behalf of the Municipal Committee the tenant raised no objection either that the Municipal Committee had not authorised the defence of the suit or that Munshi Ram had no power to represent the Committee. Objections of this kind should be asserted at the earliest possible opportunity and before issue is joined on the merits; if they are not raised before the trial Court they are deemed to be waived. They cannot be raised after judgment or entertained for the first time in the appellate Court. The fact that these objections were not raised before the Rent Controller entitles the Court to presume that the Municipal Committee sanctioned the defence of the suit and that Munshi Ram had power to represent the Municipal Committee before the Rent Controller.

But it is possible to argue that the tenant in the present case is not objecting that the Committee did not authorise the defence of the suit or that Munshi Ram has no power to appear on behalf of the Committee; he is objecting only to the power of Munshi Ram to appear when the Committee had not authorised the filing of the appeal. This objection appears to me to be wholly untenable. If a person prefers an appeal against an order of the trial Court he does not bring a new suit but merely continues the original suit, for appellate jurisdiction is nothing more than the authority of a superior tribunal to review, reverse, correct or affirm the decisions of an inferior Court

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or tribunal. As pointed out in *Marbury v. Madison* (1), it is the essential criterion of appellate jurisdiction that it revises and corrects the proceedings in a cause already instituted and does not create that cause. If the Committee actually authorised the defence of the suit and if Munshi Ram actually holds a power of attorney from the Municipal Committee it seems to me that it was open to him to represent the Municipal Committee at all stages of the litigation. I am aware of no provision of law which requires a Municipal Committee to accord a separate sanction at each separate stage. Sanction accorded to the defence of a suit is equivalent to a sanction accorded to the defence of the suit from the lowest to the highest Court.

For these reasons I would allow the petition set aside the order of the learned District Judge and direct the learned District Judge to hear and determine the appeal on merits. There will be no order as to costs.

The parties have been directed to appear before the learned District Judge on the 14th January, 1957.

LETTERS PATENT APPEAL.

Before Falshaw and Bishan Narain, JJ.

SHRI PREM NATH,—Appellant.

versus

THE UNION OF INDIA,—Respondent.

Letters Patent Appeal No. 276 of 1955.

1957
Jan., 16th

Arbitration Act (X of 1940)—Sections 14 and 17—Arbitrator—Whether can give himself jurisdiction by wrong decision on facts—Challenge to jurisdiction of arbitrator—Course to be followed by the arbitrator—Point, whether can be decided by the arbitrator or the court.