India. Their representations were considered with the help of the Central Advisory Committee for Gazetted Officers. Even if the petitioners justly feel that they have not been equitably and fairly treated in the matter of equation of their services and consequent integration, they can hardly claim any relief under Article 226 of the Constitution, as this Court does not sit in appeal over the decisions of the Central Government on merits under the Act.

No other point has been argued in this case by the counsel for the parties. The writ petition, therefore, succeeds only partially. Respondent No. 2 is directed to implement the decision of the Central Government contained in paragraph 2 of its order (Annexure 'G') communicated with its letter, dated April 14, 1961 (Annexure 'F'), and to work out and adjust the *inter se* seniority of the integrated cadre of the petitioners with effect from November 1, 1956. on the basis that the name of Mohinder Singh was deemed to have been placed below those of the petitioners in the joint seniority list and to give the petitioners benefits, if any, that may accrue to them in chain reaction of the requisite implementation. In all other respects the petition fails and is dismissed. but without any order as to costs.

R.N.M.

REVISIONAL CIVIL

Before Mehar Singh, C.J.

MAJOR MICHAL A. R. SKINNER AND OTHERS,—*Petitioners*

versus

MUNICIPAL COMMITTEE, HANSI,—*Respondent*

Civil Revision No. 240 of 1966.

May 15, 1967

Code of Civil Procedure (Act V of 1908)— S. 9—Punjab Municipal Act (III of 1911)—Ss. 3(1) (b)(ii), 69, 84 and 86—Suit for the recovery of excess amount charged as house tax on the ground that deduction under S. 3(1)(b)(ii) was not allowed—Whether maintainable in a civil court.

Major Michal A. R. Skinner, etc. *v.* Municipal Committee, Hansi
(Mehar Singh, C.J.)

Held, that where the grievance is against an assessment or levy of any tax or against the refusal to levy any tax, it would eminently be a matter for appeal under sub-section (1) of section 84 of the Punjab Municipal Act, but where the grievance is that a tax has been imposed on what was not taxable, that would be a case of the authority going beyond its jurisdiction in the matter of taxation. Now, there is no substantial difference between what is exempt and hence not taxable and what is allowed as a statutory deduction and cannot be made a part of the amount on which tax is to be levied. In substance the result comes to the same. So in the present case the civil Court had jurisdiction to try the claim of the applicants, if true, because the defendant municipality has not complied with the provisions of the Punjab Municipal Act ,1911 inasmuch as it has not given effect to section 3(1)(b)(ii) of the Act in regard to the assessment and levy of taxes on the property of the applicants.

Petition under section 115 *of the Code of Civil Procedure, for revision of the order of Shri Banwari Lal Singla, Senior Sub-Judge, Hissar, dated* 14*th July*, 1964, *affirming that of Shri V. K. Kaushal, Sub-Judge*, 1*st Class, Hissar, dismissing the suit of the plaintiffs.*

G. C. MITTAL, ADVOCATE, for the Petitioners.

B. S. GUPTA, ADVOCATE, for the Respondent.

JUDGMENT

MEHAR SINGH, C.J.—This is a plaintiff's revision application from the appellate judgment, dated November 16, 1964 of the Senior Subordinate Judge of Hissar, affirming the judgment and decree, dated April 15, 1964, of the trial Court, which dismissed the suit of the plaintiffs on the ground that its jurisdiction to entertain and try the suit is barred under sections 84 and 86 of the Punjab Municipal Act, 1911 (Punjab Act 3 of 1911), hereinafter referred to as the Act.

The facts of the case appear in a notice, dated December 27, 1963, by the applicants' counsel, Shri Bal Krishan Jain, Advocate, Hansi, to the Administrator of Hansi Municipality under section 49 of the Act, and the very facts are reproduced by the plaintiffs in the plaint. It is stated that the respondent municipality has levied and charged house-tax and water-tax on gross annual rental value of the property of the applicants at Hansi as below:—

(i) On May 31, 1961, Rs. 115.20 Paise as house-tax;

(ii) On May 31, 1962, Rs. 192 as house-tax;

(iii) On August 29, 1963, Rs. 192 as house-tax; and

(iv) On November 13, 1963, Rs. 108 as water-tax.

It is then pointed out that the respondent municipality has realised excess of Rs. 61.72 Paise illegally. Claim was made for the payment back of the amount to the applicants. On that notice followed the suit by the applicants for the recovery of Rs. 61.72 Paise. In the trial Court the respondent municipality entered into a number of defences, including three defences:—

(a) That the claim of the applicants is barred from the jurisdiction of the trial Court in view of sections 84 and 86 of the Act;

(b) That in fact deduction of 10 per cent repairs on the gross annual rent according to section 3(1)(b)(ii) was allowed to the applicants; and

(c) That the assessment orders with regard to the applicants were made by the Deputy Commissioner exercising appellate powers under section 84 of the Act with the consent of the applicants.

The learned trial Judge only considered one of the defences taken by the respondent municipality and that having reference to its jurisdiction to entertain and try the suit. It found against the applicants and its decree has been affirmed on appeal by the Senior Subordinate Judge.

The argument here on behalf of the applicants is that leaving out other questions that have been raised as defences by the respondent municipality to the claim of the applicants and also the question of limitation, if it arises in relation to any amount of tax paid, the only matter that requires consideration is the one that was subject of argument before the Courts below—whether the civil Court has or has not jurisdiction to try the claim of the applicants?

The learned counsel for the applicants refers to section 3(1) (b) (ii) of the Act, which reads:—

"3(1) 'annual value' means:—

(a) * * * * *

(b) in the case of any house or building, the gross annual rent at which such house or building, together with its appurtenances and any furniture that may be let for use or enjoyment therewith, may reasonably be expected to let from year to year, subject to the following deductions:—

(i) * * * * *

(ii) a deduction of 10 per cent for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross annual rent. The deduction under this sub-clause shall be calculated on the balance of the gross annual rent after the deduction (if any) under sub-clause (i)."

and his contention is that deduction of 10 per cent for the cost of repairs and for all other expenses necessary to maintain the property in a state to command gross annual rent is a statutory demand on the assessing authority which it must comply with. If it does not comply with that demand, it does not act in accordance with the provisions of the statute and hence the claim is within the jurisdiction of the civil Court. The learned counsel likens a statutory deduction provided in a taxing statute to an exemption provided in such a statute. An exemption in a taxing statute says that some thing is not liable to tax and a deduction in a taxing statute comes to the same, for it amounts to no more than this, that the tax is only attracted on something less by what is to be deducted. In other words, tax is not attracted to what is to be deducted. The learned counsel then refer to two cases decided by the Supreme Court, *Firm Seth Radha Kishan* v. *Municipal Committee, Ludhiana* (1), and *State of Kerala* v. *Ramaswami Iyer and Sons* (2), in which Lordships have held that where a taxing statute provides a complete machinery for redress of grievances within its scope, recourse must be had to remedies under the statute, but, even though the jurisdiction of a livil Court is barred either expressly or by necessary implication with regard to such matters, it still has jurisdiction where the provisions of the statute have not been complied with or

(1) A.I.R. 1963 S.C. 1547.
(2) A.I.R. 1966 S.C. 1738.

the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. In the present case there is no allegation that the municipality in assessing the annual value of the applicants' property or in imposing and realising the taxes has not acted in conformity with fundamental principles of judicial procedure. The argument is that it has not complied with the statute inasmuch as it has not allowed deduction of 10 per cent for the cost of repairs and for other expenses as mentioned in section 3(1)(b)(ii) of the Act. The learned counsel for the respondent municipality points out that in the written statement of the respondent municipality it has been clearly stated that the assessment orders were made with the consent of the applicants. This, however, is a matter which concerns the merits of one of the defences raised by the respondent municipality to the claim of the applicants. The question to be considered is, as already stated, whether the civil Court has or has not jurisdiction to entertain and try the claim of the applicants?

The definition of the expression 'annual value' appears in section 3(i) of the Act. Section 61 deals with taxes that may be imposed by a municipality and sub-clause (e) of clause (1) of it refers to 'a tax, payable by the occupier of any buildings in respect of which the committee has, in exercise of the powers conferred by sections 159 to 165 of the Act, undertaken the house scavenging'. A municipality has to pass a resolution under sub-section (1) of section 62 of the Act and then follows the procedure for completion of the imposition of the taxes as in the remaining sub-sections of this section. Sub-section (12) of this section says that 'a notification of the imposition of a tax under this act shall be conclusive evidence that the tax has been imposed in accordance with the provisions of the Act.' Section 63 deals with the power of the municipality to prepare an assessment list and clauses (d) and (e) of this section read :—

> "63. The committee shall cause an assessment list of all buildings and lands on which any tax is imposed to be prepared, containing—
>
> (a) * * * * * *
>
> (b) * * * * * *
>
> (c) * * * * * *
>
> (c) * * * * * *

(d) the annual value, area or length of frontage on which the property is assessed; and

(e) the amount of the tax assessed thereon by the committee."

Such a list is duly published, and according to section 65 of the Act objections may be made to the valuation and assessment. Section 66(1) deals with enquiry into the objections and the final settlement of the valuation list of which, according to sub-section (2) of this section, public notice is to be given that it is open to all the owners and occupiers of property for inspection. Section 67 deals with the amendment of the assessment list, and section 68 with preparation of new such list every year. Section 69 is somewhat relevant in the present case and it reads—

"69. No assessment and no charge or demand of any tax made under the authority of this Act shall be impeached or affected by reason of any mistake in the name, residence, place of business or occupation of any person liable to pay the tax, or in the description of any property or thing liable to the tax, or of any mistake in the amount of assessment or tax, or by reason of any clerical error or other defect of form; and it shall be enough in any such tax on property or any assessment of value for the purpose of any such tax if the property taxed or assessed is so described as to be generally known: and it shall not be necessary to name the owner or occupier thereof."

Sub-sections (1) and (2) of section 84 and sub-section (1) of section 85 deal with appeals against taxation and limitation for such appeals. Those sections are—

"84. (1) An appeal against the assessment or levy of any or against the refusal to refund any tax under this Act shall lie to the Deputy Commissioner or to such other officer as may be empowered by the State Government in this behalf :

Provided that, when the Deputy Commissioner or such other officer as aforesaid, is, or was when the tax was imposed, a member of the committee, the appeal shall lie to the State Government.

(2) If, on the hearing of an appeal under the section, any question as to the liability to, or the principle of assessment of, a tax arises, on which the officer hearing the appeal entertains reasonable doubt, he may either of his own motion or on the application of any person interested, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer the statement with his own opinion on the point for the decision of the High Court.

85. (1) No appeal shall lie in respect of a tax on any land or building unless it is preferred within one month after the publication of the notice prescribed by section 66 or section 68, or after the date of any final order under section 69, as the case may be, and no appeal shall lie in respect of any other tax unless it is preferred within one month from the time when the demand for the tax is made :

Provided that an appeal may be admitted after the expiration of the period prescribed therefor by this section if the appellant satisfies the officer before whom the appeal is preferred that he had sufficient cause for not presenting the appeal within that period."

The only other section that may be noticed is section 86, which is in this form—

"86. (1) No objection shall be taken to any valuation or assessment, nor shall the liability of any person to be assessed or taxed be questioned in any other manner or by any other authority than is provided in this Act.

(2) No refund of any tax shall be claimable by any person otherwise than in accordance with the provisions of this Act and the rules thereunder."

It is clear from sub-section (1) of section 86 that in regard to any valuation or assessment or liability of a person to be assessed or taxed, the question that may arise can only be attended to by the authorities under the Act and not by any other authority, which obviously would include a civil Court. So the jurisdiction of a civil Court is barred under sub-section (1) of section 86 to entertain any objection with regard to any valuation or assessment or liability to be assessed or taxed under the provisions of the Act. In addition,

there is the provision in section 69, which has already been reproduced above and the part that concerns this case reads—

> "69. No assessment and no charge or demand of any tax made under the authority of this Act shall be impeached or affected by reason * * * * * * * of any mistake in the amount of assessment or tax, * * * * * * * * *.

Now, the learned counsel for the applicants points out that this section is only confined to a mistake and it does not cover a case where a municipality, as in this case, has completely failed to allow deduction according to section 3(1)(b)(ii) of the Act or has refused to do so, although immediately after the words that have already been reproduced appear the words "by reason of any clerical error or other defect of form." I think the argument advanced by the learned counsel for the applicants is correct. It has to be a mistake first before the provisions of this section will be attracted. If it is not the case of a mistake, then this section will not be attracted. Obviously where a deduction is directed to be made by the statute and it is not made by the assessing authority, that is not a case of a mere mistake. It would be a case of refusal to exercise jurisdiction. The learned counsel for the respondent municipality, however, contends that firstly it would be a case of a mistake and secondly the omission to allow deduction under section 3(1)(b)(ii) of the Act or refusal to do so would be a matter that would be subject of appeal according to sub-section (1) of section 84 of the Act and "against the assessment or levy of any or against the refusal to refund any tax under this Act * * * * *." Although it is a matter that may also be raised in appeal under sub-section (1) of section 84 of the Act, but that does not mean that the assessing authority has exercised its jurisdiction in giving effect to a statutory provision as section 3(1)(b)(ii) when it omits or refuses to give effect to it. So that where the grievance is against an assessment or levy of any tax or against the refusal to levy any tax, it would eminently be a matter for appeal under sub-section (1) of section 84 but where the grievance is that a tax has been imposed on what was not taxable, that would be a case of the authority going beyond its jurisdiction in the matter of taxation. Now, there is no substantial difference between what is exempt and hence not taxable and what is allowed as a statutory deduction and cannot be made a part of

the amount on which tax is to be levied. In substance the result comes to the same. So in the present case the civil Court had jurisdiction to try the claim of the applicants, if true, because the defendant municipality has not complied with the provisions of Punjab Act 3 of 1911 inasmuch as it has not given effect to section 3(1)(b)(ii) of the Act in regard to the assessment and levy of taxes on the property of the applicants. In this approach this revision application has to succeed.

Nothing said above has any bearing on any other defence taken by the respondent municipality in the suit. Apart from the question of jurisdiction, reference has also been made to two other defences of the respondent municipality. There may be other defences, including the defence of limitation. All those are questions on the merits of the controversy between the parties which will in due course be attended to by the trial Court according to law.

In the circumstances this revision application is accepted, the decrees of the Courts below are reversed and the case is remitted back to the trial Court for trial according to law on a finding that it has jurisdiction to try the claim of the applicants, because the respondent municipality has not complied with the provisions of Punjab Act 5 of 1911 in not giving effect to section 3(1)(b)(ii) in the case of assessment and levy of taxes on the property of the applicants. There is no order in regard to costs in this application. The parties, through their counsel, are directed to appear in the trial Court on June 6, 1967.

B. R. T.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

RAM CHANDER AND OTHERS,—*Petitioners*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents*

Civil Writ No. 2661 of 1966.

May 15, 1967

Northern India Canal and Drainage Act (VIII of 1873)—Section 57—Government finding the case falling within the section—Whether bound to draw