Supreme Court of India
Ratilal Chhaganlal vs Dhari District Municipality on 5 January, 1971
Equivalent citations: AIR 1971 SC 749, 1971 LablC 480, (1971) 1 SCC 307, 1971 III UJ 139 SC
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Bench: J Shah, A Grover, K Hegde
JUDGMENT K.S. Hedge, J.

1. The material facts in this appeal, by special leave lie within a narrow compass. The appellant was working as Officiating Secretary of the respondent municipality in December 1951. It is said that when the cash balance was checked on December 24, 1951, it was short by Rs. 250/-. On that ground he was dismissed from service by the President of the Municipality. On the question whether the appellant was guilty of misconduct, there was difference of opinion between the President and the Vice-President as well as between the President and the Municipality. Later on the Municipality was superseded by the Government and an administrator appointed. The administrator after looking into the relevant papers came to the conclusion that the appellant should be dismissed from service. He accordingly passed the order dismissing him on July 25, 1952. The appellant's appeal to the Director of Local Authorities was rejected on January 24, 1953. Thereafter he instituted a suit seeking a declaration that his dismissal was illegal and invalid and therefore he continues to be in service. The trial Court came to the conclusion that the appellant's dismissal was illegal and void but it dismissed the suit on the ground that it was barred by limitation. In appeal the first appellate Court differed from the trial Court on the question of limitation but it held that though the appellant's dismissal was wrongful, the same was not illegal and void. On that ground it affirmed the decree of the trial Court. In second appeal the High Court concurred with the conclusions reached by the first appellant Court.

2. All the Courts below have concurrently come to the conclusion that the appellant had not been given proper opportunity to establish his innocence. They came to the conclusion that no charges had been served on the appellant nor any proper enquiry held. Hence there was a breach of principles of natural justice but both the first appellate Court and the High Court rejected the plaintiff's prayer on the ground that his dismissal was merely wrongful and not illegal; hence he could claim only damages and not a declaration that he continues to be in service. The respondent-Municipality is a 'B' class Municipality, According to Rule 6 of the Rules framed by that Municipality in matters of appointment, punishment, dismissal, fine, reduction in rank, suspension from work, leave, pension and contribution to Provident Fund, the relevant rules applicable to the State Servants prevailing from time to time were to apply to the servants of the Municipality. In that way Rule 55 of the Bombay Civil Services Conduct, Discipline and Appeal Rules governed the case of the plaintiff That rule provides inter alia that no order of dismissal, removal or reduction shall be passed on a number of the Service...unless he has been informed in writing all the grounds on which it is proposed to take action against him and he has been afforded an adequate opportunity of defending himself. It further provides the manner in which the enquiry has to be held against any such person. On the facts found by the Courts below, clearly there was a contravention of Rule 6 read with Rule 55 of the Bombay Civil Services Conduct, Discipline and Appeal Rules. But both the first appellate Court and the High Court have come to the conclusion that Rule 6 is only directory and not mandatory and hence its contravention merely makes the order of dismissal wrongful and

not illegal. In coming to that conclusion they have followed the earlier decisions of the Gujarat High Court as well as the decision of the Bombay High Court in Broach Municipality v. Bhadriklal Ambalal Patel 53, B.L.R. 282. The rule that came up for consideration in Ambalal Patel's case (supra) is similar to the one with which we are concerned in this appeal. The interpretation placed by the Bombay High Court on that Rule as far back as in 1950 appears to have been consistently followed by the Bombay High Court and later on by the Gujarat as could be gathered from the judgment of the High Court. Herein we are concerned with an interpretation of a rule under a local law. The concerned High Courts have consistently taken the view that procedure prescribed under that rule is directory and not mandatory It will not be proper for this Court to disturb the settled law. In this view, we do not think that we should interfere with the judgment of the High Court.

3. This appeal is accordingly dismissed. But in the circumstances of the case we direct that the parties shall bear their own costs in all the Courts.