

Anand Swarup Singh

Vs

State of Punjab

Civil Appeal No. 1854 of 1967

(K.S. Hegde, A.N. Grover, A.N. Ray JJ)

30.11.1971

JUDGMENT

HEGDE, J. -

1. This is a plaintiff's appeal. The plaintiff joined as Naib Tehsildar in Patiala State on June 14, 1930. He was removed from service on January 20, 1949. His representation against his removal was rejected. Thereafter on October 25, 1965, he filed a civil suit for recovery of arrears on pension, said to be due from August 25, 1959 till October 24, 1965. The trial Court decreed the claim as prayed for.

2. The State of Punjab went up in appeal against the decree of the trial Court. In the grounds of appeal it was specifically stated : "It is prayed that the judgment and decree of the lower court to the extent it awards the amount of pension for 6 years be set aside and it be held that the respondent is entitled to recover the said amount for 3 years". From this it is clear that in the appeal the State of Punjab merely disputed the plaintiff's right to claim arrears of pension for six years, but conceded his right to claim pension for three years immediately preceding the suit. But curiously enough at the time of the hearing of the appeal everyone appears to have overlooked the scope of the appeal. The High Court went in to the question whether the suit brought by the plaintiff was maintainable. It came to the conclusion that the suit was not maintainable and it accordingly dismissed the suit in its entirety. This conclusion is wholly untenable in view of the scope of the appeal filed by the State of Punjab. It may be noted that on October 4, 1966, the President of India revoked the order made on January 20, 1949 and restored the plaintiff to service but by his order dated October 25, 1966 the President declared that the plaintiff must be deemed to have retired on September 28, 1955 when he attained the age of 55 years. In view of this order, which we are told was placed before the High Court the High Court was not justified in holding that the plaintiff's suit was not maintainable as the plaintiff had not prayed for a declaration setting aside the order made on January 20, 1949. In this view, it is not necessary to consider the correctness of the High Court's conclusion that the suit as brought by the plaintiff is not maintainable.

3. Now coming to the question whether the plaintiff is entitled to claim arrears of 6 year's pension, but the question appears to be concluded by the decision of this court in *Shri Madhav Laxman Vaikunthe v. State of Mysore* ((1962) 1 SCR 886 : AIR 1962 SC 8) wherein this Court held that in the case of a claim for arrears of salary the period of limitation will be that laid down in Article 102 of the Indian Limitation Act, 1908. It has not been shown that the ratio of that decision is inapplicable to the present case.

4. In the result this appeal is allowed to the extent mentioned above. The plaintiff will have a decree,

against the defendants, for arrears of pension for three years preceding the suit with interest at the rate mentioned in the trial Court's decree. But in the circumstances of this case we allow him the full costs in all the courts.

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