Maimoona Khatun and Another

Vs

State of U. P. and Another

Civil Appeal No. 1523 (N) of 1970

(Syed M. Fazal Ali, A.D. Koshol, P. S. Kailasam JJ)

16.04.1980

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave is directed against a Judgment and Decree dated February 11, 1969 passed by the Allahabad High Court modifying the decree passed by the lower Appellate Court and decreeing the plaintiff's claim for arrears of salary, etc., for a period of three years from the date of the suit adding two months to this period. The facts of the case lie within a narrow compass and may be summarised thus :

2. Zamirul Hassan (hereinafter referred to as the 'employee') was employed as a tubewell technician in the Irrigation Department of U.P. Government (hereinafter referred to as the 'Government'). In the year 1954, Zamirul Hassan was posted at Lucknow and was drawing a salary of Rs. 110 per month plus Rs. 30 as Dearness Allowance. He was granted medical leave from February 15, 1954 to April 24, 1954 after which he applied for extension of his leave which was, however, refused. Accordingly, the employee reported for duty on April 20, 1954 but he was not given charge of office on that date. Instead the employee was served with notice dated March 27, 1954 terminating his services with immediate effect on the ground that he had reached the age of superannuation. The employee challenged the validity of the notice through a representation given to the Chief Engineer, Irrigation Department, contending that as he was below 55 years of age, he could not be superannuated. Ultimately, the Superintending Engineer upheld the contention of the employee by his Order dated December 31, 1955 and ordered his reinstatement directing that the intervening period may be treated as leave admissible to him. The employee was then posted at Mathura on the February 15, 1956. On January 7, 1957, however, the employee suddenly fell ill at Budaun and died on January 12, 1957. Even in spite of his reinstatement the employee did not receive his salary from February 15, 1954 to February 14, 1956 amount to Rs. 3,360 as also from January 1, 1957 to January 12, 1957 which amounted to Rs. 53. Thus, the total amount which was claimed to be due to the employee up to the time of his death came to Rs. 3,413 which remained unpaid. On the death of the employee, his widow, the present appellant, along her daughters, obtained a succession certificate and made a claim to the respondent-Government. Despite the claim the arrears of the salary of the employee were not paid and hence the present plaintiffs after giving notice, under Section 80 of the Code of Civil Procedure, to the Government brought the present suit for recovery of Rs. 3035-5-0. The Civil Judge held that the suit was not barred by time and decreed the suit. Thereafter, the Government went up in appeal to the appellate Court which confirmed the judgment and decree of the trial Court. The appellate Court, however, directed the plaintiff to produce a succession certificate from the District Judge before receiving the amount. Having lost in the courts below, the Government filed a second appeal in the High Court and contended that the order dated

December 31, 1955 was a valid one and the direction that the intervening period may be treated as leave was in accordance with law and hence the plaintiff could not claim the amount during this period. The High Court overruled the plea taken by the Government on this point. It was then contended before the High Court that the suit was barred by limitation under Article 102 of the Indian Limitation Act (Act 9 of 1908), as it then stood. The central dispute between the parties in the High Court was as to what should be the starting point of limitation in this particular case. According to the appellant, the starting point of limitation would be the date when the employee was reinstated and restored to service and therefore he was entitled to the entire salary which became due. The stand taken by the Government was that the period of limitation was to be computed not from the date of his reinstatement but from the date when the salary became due and therefore the claim for salary which was due for any period beyond three years of the filing of the suit was barred by limitation. The High Court partially accepted this argument and held that the suit was undoubtedly barred for any claim preferred by the plaintiff beyond three years from the date of the filing of the suit except for a further period of two months from the date of the institution of the suit. The High Court accordingly allowed the appeal and modified the decree of the courts below. We might mention here that the trial Court decreed the a plaintiff's suit after coming to a clear finding that the employee, Zamirul Hassan, should have been treated to be on duty during the entire period because he was illegally prevented from doing his duty. As a logical conclusion of this finding, the trial Court also held that the employee was entitled to his pay at the rate claimed by him for the period mentioned in the plaint. It was further held by the trial Court that on the representation of the employee, his services were fully restored and he was therefore entitled to his full salary. The appellate Court and the High Court affirmed this finding of fact given by the trial Court. Thus, the admitted position before us appears to be that the employee having been reinstated would be deemed to have continued in service right from the date when he was superannuated to the date when he died as the Department itself reinstated and restored his service. There was thus no justification for the Superintending Engineer to have given a direction that the period of his suspension would be treated as leave. The trial Court had held that the suit was not barred by limitation for any part of the claim of the plaintiff. The High Court, however, differed only on his limited question of law.

3. We have heard learned counsel for the parties and although we find that the question is not free from difficulty, the decisions of this Court show that the view taken by the High Court is legally erroneous. The High Court mainly relied on a decision of this Court in Shri Madhav Laxman Vaikunthe v. State of Mysore ((1962) 1 SCR 886 : AIR 1962 SC 8: (1962) 1 SCJ 134) as also a previous decision of the Federal Court in Punjab Province v. Pandit Tarachand ((1947) FCR 89 : AIR 1947 FC 23 : (1947) 23 MLJ 389).

4. Article 102 (now Article 7 of the Limitation Act, 1963) may be extracted thus :

> #For wages in the case | Three years | When the wages accrueof any other person | | due.##

5. The Federal Court in Punjab Province case ((1947) FCR 89 : AIR 1947 FC 23 : (1947) 2 MLJ 389) had clearly laid down that the term 'wages' appearing in Article 102 of the Limitation Act of 1908 included salary and in this connection observed thus :

> Article 102 applies to suits for wages not otherwise provided for by the schedule and covers in our judgment a suit to recover arrears of pay .... In Article 102 it is intended our judgment to cover all claims for wages, pay or salary, not otherwise

> expressly provided for in any other Article of the schedule.

It further held that a servant of the Crown in India had the right to maintain a suit for recovery of arrears of pay which had become due him. This decision was given because there was some controversy on the question as to whether or not a suit for arrears of salary could be brought in a court of law. The controversy appears to have been set at rest by the Federal Court in the aforesaid decision. Furthermore, the court held that where an order of dismissal is invalid the position is that the employee was never dismissed in the eye of law and would be deemed to have continued in service until retirement. In this connection the Court observed : ((1947) FCR 89 : AIR 1947 FC 23 : (1947) 2 MLJ 389)

The Order of March 19, 1938, purporting to dismiss the respondent having been made by an authority that had been expressly debarred by Section 240(2) of the Constitution Act from making it, was utterly void of all effect. It was in the eye of the law no more than a piece of waste paper. The position is that the respondent was never legally dismissed from service and continued in law to be a Sub-Inspector of Police till the date on which he was under the conditions of his service due to retire. He was thus entitled to draw his salary for period if his service after March 19, 1938.

6. The question as to what should be the starting point of limitation under Article 102 was neither raised nor decided. It seems to have been assumed or admitted by the parties that as Article 102 applied, the period of limitation would be three years from the date when the right to sue accrued. The Federal Court, however, did not decide as to when the right under Article 102 would actually accrue.

7. This matter came up for consideration again in Shri Madhav Laxman Vaikunthe case ((1962) 1 SCR 886 : AIR 1962 SC 8 : (1962) 1 SCJ 134), a case on which the High Court has heavily relied, where it was held that the suit of the plaintiff would be governed by Article 102 of the Limitation Act of 1908 which provided a period of three years from the date when the right to salary would accrue. In this case also, the question as to when the right to sue for the salary actually accrued was neither raised nor decided and the only controversy which was before the court rested on the question as to whether Article 102 or some other Article would apply to the suit. Another question that was argued before this Court was whether a government servant had a right to recover the arrears of pay by action in a civil court. It was decided by the Supreme Court that an employee had a right to bring a suit for recovery of arrears of pay in a civil court as held by the Federal Court in Punjab Province case ((1947) FCR 89 : AIR 1947 FC 23 : (1947) 2 MLJ 389). In this connection, this Court observed as follows :

> On the question of limitation, he held that the suit would be governed by Article 102 of the Indian Limitation Act (9 of 1908) as laid down by the Federal Court in the case of Punjab Province v. Pandit Tarachand ((1947) FCR 89 : AIR 1947 FC 23 : (1947) 2 MLJ 389). In that view of the matter, the learned Judge held that adding the period of two months of the statutory notice under Section 80 of the Code of Civil Procedure given to government, the claim would be in time from June 2, 1951 ...... The appellant contended that his suit for arrears of salary would not be governed by the three years rule laid down in Article 102 of the Limitation Act and that the decision of the Federal Court in Tarachand case ((1947) FCR 89 : AIR 1947 FC 23 : (1947) 2 MLJ 389) was not correct. The sole ground on which this contention was based was that "salary" was not included within the term "wages". In our opinion, no good reasons have been adduced before us for not following the aforesaid decision of

> the Federal Court. In the result, the appeal is allowed in part, that is to say, the declaration granted by the trial Court that the order of the government impugned in this case is void, is restored, in disagreement with the decision of the High Court. The claim as regards arrears of salary and allowance is allowed in part only from June 2, 1951, until the date of the plaintiff's retirement from government service.

8. This Court disagreed with the High Court and restored the declaration granted by the trial Court that the impugned order of the government was void. The court also allowed the claim as regards arrears of salary only from June 2, 1951 until the date of the plaintiff's retirement from government service. Another important aspect of this decision is that the court in that case came to a clear finding that as a result of the order of reversion, the appellant had been punished but the order of the government punishing him was not wholly irregular though the requirements of Article 311 of the Constitution were not fully complied with.

9. Thus, a careful perusal of the decision would clearly reveal that the actual question at issue in the present appeal was neither raised nor involved in the aforesaid decision. This decision was noticed by a Division Bench of the Madras High Court in the case of State of Madras v. A. V. Anantharaman (AIR 1963 Mad 425 : 76 MLW 428 : (1963) 2 LLJ 584) where the court distinguished the case referred to above on the ground that the question of the starting point of limitation was neither raised nor decided by this Court. In this connection, the Madras High Court observed as follows : (AIR 1963 Mad 425 : 76 MLW 428 : (1963) 2 LLJ 584)

As we said, the terms of F.R. 52 are clear and no public servant who had been dismissed albeit only by an invalid order can ask the government to pay him his salary. His right to it will flow only when the order of dismissal has been set aside .... AIR 1962 SC 8 (Madhav Laxman v. State of Mysore, AIR 1962 SC 8 : (1962) 1 SCR 886) was not a case in which F.R. 52 prevented the accrual of salary, there the government servant had been reverted from an officiating post to his substantive post resulting in loss of seniority in that post. Such reversion was later held to be one by way of punishment and the procedure under Article 311 of the Constitution not having been followed it was held to be invalid. The only point argued in that case was whether the salary due to the government servant would come within Article 102 of the Limitation Act and that question was answered in the affirmative.

10. On the other hand, this point was specifically raised before the Madras High Court which fully went into it and held that the right to sue under Article 102 of the Limitation Act would accrue only after the order of dismissal of the employee is set aside or he is reinstated by the appointing authority concerned. Until this stage is reached the right to recover arrears of salary does not accrue at all and there is no question of suing for the arrears of salary when no order of reinstatement, as indicated above, had been passed or the order of dismissal has not been held by a court of law to be void. In this connection, the Madras High Court observed as follows : (AIR 1963 Mad 425 : 76 MLW 428 : (1963) 2 LLJ 584)

But where a public servant had been dismissed or removed, his pay and allowance would cease from the date of such dismissal or removal. That is what is provided in F.R. 52. The question then will arise as to when in such cases, that is, where there has been a dismissal or removal which has been later on set aside as a result of subsequent proceedings the right to recover arrears of salary will accrue or arise. In neither of the two cases cited above was that question raised or considered ..... The terminus a quo for a suit under that provision is the accrual of the salary. In other words, the cause of action is not any fixed point of time (e.g., on the 1st of the succeeding month) but when it

accrues. By reason of F.R. 52 the right to salary ceases the moment an order for dismissal or removal is made.

11. The High Court has rightly pointed out that the terminus quo for the suit under Article 102 is the accrual of the salary which by reason of F.R. 52 ceases the moment an order of dismissal or removal is made. Thus, until a decree holding the order of dismissal or removal to be void is passed by the court, it is not open to the employee to take any steps for recovering his salary. The Madras High Court then concluded by holding that the right to recover arrears of salary would accrue only after an order of dismissal has been set aside either in departmental appeal or by a decree in a civil court. In this connection, the High Court observed as follows :

We are therefore of opinion that in the case of the dismissal of public servant which has been subsequently set aside as in the present case, the right to recover arrears of salary would accrue only when that the order of dismissal has been set aside either in departmental appeal or by a civil court. Viewed in that light, the instant claim must be held to be in time.

12. We find ourselves in complete agreement with all the observations made by the Madras High Court in the aforesaid case. The counsel for the respondent submitted that the Madras High Court erred in relying on Fundamental Rule 52 which would apply only to a case where the employee had been removed and then reinstated by the appointing or the departmental authority. In support of his argument, he relied on the case of Devendra Pratap Narain Rai Sharma v. State of Uttar Pradesh (1962 Supp 1 SCR 315 : AIR 1962 SC 1334 : (1962) 1 LLJ 266) where after extracting Rule 54 of the Fundamental Rules framed by the State of Uttar Pradesh under Article 309 of the Constitution, this Court held thus :

> This rule has no application to cases like the present in which the dismissal of a public servant is declared invalid by a civil court and he is reinstated.

13. Assuming that this was so, the principle contained in Rule 54 would, however, apply in any case and the position would be that until a government servant is reinstated, he cannot claim any arrears of salary or pay. Moreover, in the instant case, Rule 54 applies in terms because the employee was serving in the State of U.P. and was governed by Rule 54 and was reinstated by the Superintending Engineers, after his representation was accepted. It is, therefore, manifest that the employee could not have claimed any arrears of his salary until he was reinstated. Thus, even according to the decision relied upon by the respondent, it is clear that the right to sue for arrears of salary accrued only after the employee was reinstated. This Court further observed in the aforesaid case : (1962 Supp 1 SCR 315 : AIR 1962 SC 1334 : (1962) 1 LLJ 266)

The effect of the decree of the civil suit was that the appellant was never to be deemed to have been lawfully dismissed from service and the order of reinstatement was superfluous. The effect of the adjudication of the civil court is to declare that the appellant had been wrongfully prevented from attending to his duties as a public servant. It would not in such a contingency be open to the authority to deprive the public servant of the remuneration which he would have earned had he been permitted to work.

14. In view of this observations once the civil court held that the direction given by the Superintending Engineer to treat the period of suspension as on leave being non est, the position would be that the employee continued to remain in service and the effect of the adjudication was to declare that he was wrongfully prevented from attending his duties as a public servant. In other

words, the right to emoluments accrued on the date when the suit was decreed and the starting point of limitation will be that date because at no time prior there was any accrual of the right and hence the stating point of limitation would not be the date of reinstatement but the date when the court held that the direction given by the Supertending Engineer was bad because until such a declaration was made, it was not open to the employee to have claimed the arrears of his salary.

15. So far as the question when the right would accrue and whether the period of three years was to be counted from the date of the suit or the date of the reinstatement was a point that was neither raised nor answered even in this decision. In the case of State of Bombay v. Dr. Sarjoo Prasad Gumasta (ILR 1968 Bom 1024) the view taken by the Madras High Court was fully endorsed and it was pointed out that under Fundamental Rules 53 and 52 the government servant's salary ceased upon his suspension an he becomes entitled only to subsistence allowance. It was held that so long as the order of suspension or dismissal stands, the Government servant cannot obviously claim his salary because no salary as such accrue due. The court observed thus :

> That date would be the starting point of limitation for a suit by the government servant and the date when the order is quashed would be the terminus a quo for a suit by the government servant of claim for the arrears of salary and allowance for the period from the date of his suspension and/or dismissal.

16. A Division Bench of the Delhi High Court has also taken a similar view and while dwelling on the starting point of limitation under Article 102, in the case of Union of India v. Gian Singh (AIR 1970 Del 185 : 72 Pun LR (D) 190 : 1970 Lab IC 1264), observed as follows :

> Article 102 of the said Limitation Act undoubtedly provides that a suit for wages has to be filed within three years of the time when they accrue due. The question, therefore, is whether the respondent did have a cause of action for claiming his full pay and allowances for the period November 19, 1953 to July 18, 1956 in the present suit which he filed on September 10, 1959. .... It was only on the date of the receipt of the notice of termination of services, that is, January 16, 1958 that the order of suspension stood revoked, and it would be only on and after January 26, 1958 that the respondent could be entitled to claim full pay and allowances for the period of suspension. Full wages for the period of suspension would, therefore, accrue to him by reason of Fundamental Rule 53 only when the order of suspension is revoked or could be deemed to have been revoked. Prior to that the wages would not accrue and he would have no cause of action.

17. So far as this Court is concerned, the matter stands concluded by a decision of this Court in the case of State of Madhya Pradesh v. State of Maharashtra ((1977) 2 SCC 288, 296-297, 298) where a Bench of three Judges considered this specific question and distinguished the earlier decisions of this Court in Jai Chand Sawhney v. Union of India ((1970) 3 SCR 222 : (1969) 3 SCC 642) and Sakal Deep Sahai Srivastava v. Union of India ((1974) 2 SCR 485 : (1974) 1 SCC 338 : 1974 SCC (L & S) 158). While expounding the law regarding as to when the right to sue actually accrues, this Court observed as follows : ((1977) 2 SCC 288, 296-297, 298) (SCC pp. 296-297 & 298; paras 31, 32, 33 & 35)

Three features are to be borne in mind in appreciating the plaintiff's case from the point of view of limitation. First the plaintiff became entitled to salary for the period September 16, 1943 up to the date of reinstatement on December 12, 1953, only when pursuant to the decree dated August 30,

1953 there was actual reinstatement of the plaintiff on December 12, 1953. ... On these facts two consequences arise in the present appeal. First, since the plaintiff was under suspension from September 16, 1943 till December 12, 1953 when he was reinstated and again suspended from January 19, 1954, till February 23, 1956 when he was dismissed, his suit on October 6, 1956 is within a period of three years from the date of his reinstatement on December 12, 1953. Second, during the period of suspension he was not entitled to salary under Fundamental Rule 53. Further decision to that effect was taken by the Madhya Pradesh Government on January 28, 1956 under Fundamental Rule 54. Therefore, the plaintiff's cause of action for salary for the period of suspension did not accrue until he was reinstated on December 12, 1953. The plaintiff's salary accrued only when he was reinstated as a result of the decree setting aside the orders of suspension and not of dismissal.

The ruling of this Court in Jai Chand ((1970) 3 SCR 222 : (1969) 3 SCC 642) Sawhney's case and Sakal Deep's case ((1974) 2 SCR 485 : (1974) 1 SCC 338 : 1974 SCC (L & S) 158) do not apply to the present appeal because there was no aspect of any suspension order remaining operative until the fact of reinstatement pursuant to the decree. .... Therefore, there would be no question of salary accruing or accruing due so long as order of suspension and dismissal stand. The High Court was correct in the conclusion that the plaintiff's claim for salary accrued due only on the order of dismissal dated February 23, 1956 being set aside.

18. It is, therefore, manifest from a persual of the observation made by this Court in the aforesaid case that the plaintiff's salary accrued only when the employee was reinstated as a result of the decree setting aside the order of suspension or dismissal.

19. In that case, the employee was suspended as far back as September 16, 1943 and after an enquiry, the employee was removed from service on November 7, 1945. The employee filed a suit on January 6, 1949 and claimed his salary from September 16, 1943, the date when he was suspended, up to the date of his reinstatement on December 12, 1953 when the decree was passed. Indeed, if the view taken by the High Court in the instant case was correct, the suit of the employer would have been hopelessly barred by limitation and he could not have got a decree for more than three years from 1949, the date when he filed the suit. This Court, however, held that as the starting point of limitation was not the date of the suit but the date when the removal of the employee was held to be void and he was reinstated, the suit was not barred by limitation. We might also mention that this Court also held that under Fundamental Rule 52 of the U.P. Rules, the pay and allowances of a government servant ceased from the date of dismissal and therefore there was no question of his claiming any arrears so long as his dismissal or removal stood. The facts of the present case seem to us to be directly covered by the decision rendered by this Court in the aforesaid case.

20. Thus, this Court has fully endorsed the view taken by the Madras and Bombay High Courts, referred to above.

21. It seems to us that if we take the view that the right to sue for the arrears of salary accrues from the date when the salary would have been payable but for the order of dismissal and not from the date when the order of dismissal is set aside by the civil court, it will cause gross and substantial injustice to the employee concerned who having been found by a Court of law to have been wrongly dismissed and who in the eye of law would have been deemed to be in service, would still be deprived for no fault of his, of the arrears of his salary beyond three years of the suit which, inspite of his best efforts he could not have claimed, until the order of dismissal was declared to be void. Such a course would in fact place the government employees in a strange predicament and give an

undeserving benefit to the employers who by wrongfully dismissing the employees would be left only with the responsibility of paying them for a period of three years prior to the suit and swallow the entire arrears beyond this period without any legal or moral justification. This aspect does not appear to have been noticed by the court which have taken the view that the starting point of limitation would be three years from the date of the suit and was for the first time noticed by this Court in State of Madhya Pradesh v. State of Maharashtra ((1977) 2 SCC 288, 296-297, 298) which seems to us to have righted a wrong which was long overdue.

22. For these reasons, therefore, we are clearly of the opinion that in cases where an employee is dismissed or removed from service and is reinstated either by the appointing authority or by virtue of the order of dismissal or removal being set aside by a civil court, the starting point of limitation would be not the date of the order of dismissal or removal but the date when the right actually accrues, that is to say, the date of the reinstatement, by the appointing authority where no suit is filed or the date of the decree where a suit is filed and decreed. In this view of the matter, the High Court was in error in modifying the decree of the trial Court and the lower appellate Court and limiting the claim of the appellant to a period of only three years prior to the suit. In view of the findings given by the courts on facts, which have not been reserved by the High Court, it is manifest that the appellants are entitled to the entire decretal amount claimed by them and for which a decree was granted by the trial Court and the lower appellate Court. We, therefore, allow this appeal, set aside the judgment and decree of the High Court and restore the judgment and decree of the trial Court. The appellant will be entitled to costs throughout and interest at the rate of 6 per cent per annum on the decretal amount from the date of the termination of his service to the date of payment.

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