

Raghubir Jha

Vs

State of Bihar and Others

Civil Appeal No. 10275 of 1983

(P. N. Bhagwati, V. B. Eradi JJ)

07.11.1983

### JUDGMENT

1. We have heard the learned advocates for the parties and after hearing them we are of the view that the High Court was in error in dismissing the appeal preferred by the appellant, on the ground of limitation. The appellant was discharged from service on July 27, 1961 and the appeal preferred by him against the order of discharge was rejected by the Commissioner, Bhagalpur Division on September 27, 1961. The appellant thereupon preferred a further appeal before the Board of Revenue but this appeal also met with the same fate and was dismissed by the Board of Revenue on March 4, 1964. Rule 12 of the Bihar and Orissa Subordinate Services (Discipline and Appeal) Rules, 1935 (hereinafter referred to as Rules of 1935) empowered the State Government and the Head of the Department to call for departmental proceedings and pass appropriate orders and pursuant to this provision the appellant filed a revision application before the State Government. The State Government rejected the revision application and though the order of rejection was made on August 5, 1965, it was not communicated to the appellant until December 19, 1965. The appellant being dissatisfied with the order of the State Government filed a suit on August 7, 1968 seeking a declaration that the order of discharge from service was illegal and void since it had been passed without complying with the principles of natural justice and affording an opportunity to the appellant to show cause why the order of discharge should not be made. The trial court as also the first appellate court took the view that the order of discharge suffered from a serious infirmity inasmuch as it was passed without following the principles of natural justice and on that account it was null and void, but they held that the suit of the appellant was barred by limitation since it was not filed within three years from the date when the original order of discharge was passed against the appellant. The result was that the suit filed by the appellant was dismissed by the trial court and the dismissal was confirmed by the first appellate court. The appellant thereupon preferred a second appeal before the High Court. Since the only ground on which the appellant had lost before the first appellate court was the ground of limitation, the appellant contended before the High Court that the ground of limitation had been wrongly decided against him and the period of limitation ought to have been computed not from July 17, 1961 but from December 19, 1965 when the dismissal of his revision application by the State Government was communicated to him. The High Court rejected this contention of the appellant and dismissed his appeal without going into the merits of the question of illegality of the order of discharge was right or wrong. The appellant thereupon preferred the present appeal with special leave obtained from this Court.

2. Now, it is true that the original order of discharge was made on July 27, 1961 but it was taken in appeal to the Commissioner of Bhagalpur Division and then in revision to the Board of Revenue and in further revision to the State Government under Rule 12 of the Rules of 1935. The final order was thus passed by the State Government in revision and it was communicated to the appellant on

December 19, 1965. The period of limitation should have therefore been counted from December 19, 1965, being the date of communication of the order of the State Government. If the period of limitation is computed from December 19, 1965, being the date of communication of the order of the State Government, the suit preferred by the appellant on August 7, 1968 would be within time.

3. We accordingly allow the appeal, set aside the judgment of the High Court and remit the case back to the High Court so that the respondents may have an opportunity of supporting the decision of the first appellate court on the ground decided against them. We may however make it clear that so far as the ground of limitation is concerned, it will stand concluded by this decision given by us.

4. There will be no order as to costs of the appeal.

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