

S. S. Rathore

Vs

State of M. P. through Collector, Betul

Civil Appeal No. 207 of 1984

(E.S. Venkataramiah, N.D. Ojha JJ)

02.02.1988

ORDER

1. The question involved in this case is one of limitation. The appellant was dismissed from service by the Additional Collector of Betul, State of Madhya Pradesh on January 13, 1966. He preferred a statutory appeal under the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1956. The said appeal was dismissed on August 31, 1966. Thereafter he instituted a suit after issuing a notice as required by law to the State Government under Section 80 of the Civil Procedure Code, 1908. The suit was filed on September 30, 1969. It is not disputed that if the period of limitation is calculated from the date of dismissal of the appeal the suit would be in time, under the relevant article of Limitation Act. But if the period of limitation has to be calculated from the Act. But if the period of limitation has to be calculated from the date of the original order of dismissed by the trial court on the ground of limitation and it has been affirmed by the first appellate court and by the High Court is second appeal. The High Court, while dismissing the appeal, relied upon a decision of this Court in Sita Ram Goel v. Municipal Board, Kanpur (1959 SCR 1148 : AIR 1958 SC 1036) which was a decision rendered by five learned Judges of this Court in which it had been held that in suits for setting aside the order of dismissal the time for instituting it would be to run from the date of communication of the original order of dismissal. In taking this view this Court relied upon an earlier decision in State of U. P. v. Mohd. Nooh (1958 SCR 595 : AIR 1958 SC 86) that in Collector of Customs v. East India Commercial Co. Ltd. ((1963) 2 SCR 563 : AIR 1963 SC 1124) another Constitution Bench of this Court has observed that Mohd. Nooh case (1958 SCR 595 : AIR 1958 SC 86) was a case which depended on its own facts. Having said so the Constitution Bench declined to follow the principles laid down by the Constitution Bench in Mohd. Nooh case (1958 SCR 595 : AIR 1958 SC 86).

2. In Raghbir Jha v. State of Bihar (1986 Supp SCC 372 : 1986 SCC (L&S) 757 : 1985 Lab IC 1791 : AIR 1986 SC 508) a Division Bench of this Court has taken the view that the period of limitation in cases of this nature should be calculated from the date of disposal of the appeal preferred against the original order of dismissal. We feel that the decision of the Division Bench is more reasonable than the rigid view which had been taken by this Court in Sita Ram Goel case (1959 SCR 1148 : AIR 1958 SC 1036). It is relevant to refer to a passage from Sita Ram Goel case which appears on page 1161 :

The result is not unfortunate for the appellant, because the trial court found in his favour in regard to his pleas of wrongful dismissal. If he had only brought the suit within the period prescribed by Section 326 of the Act, he might possibly have got some relief from the court. He, however, chose to wait till the decision of the State Government on his appeal and overstepped the limit of time to his own detriment.

We are unable to come to any other conclusion than the one reached above and the appeal must therefore, stand dismissed; but in the peculiar circumstances of the case we make no order as to costs.

3. Such unfortunate results should be avoided, if it is possible to do so. We are of the view that the decision in Sita Ram Goel case (1959 SCR 1148 : AIR 1958 SC 1036) which has been decided by a Bench of five Judges requires to be reconsidered. We therefore refer this case to a larger Bench. The papers may be placed before the Hon'ble the Chief Justice of India for further directions.

4. Since the case relates to a very old suit, it has got to be decided expeditiously. The hearing of this case is not likely to take a long time. Liberty is reserved to the appellant to mention before the Hon'ble the Chief Justice of India for including this case in the cause list of the Constitution Bench which is now sitting.

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