State of Punjab and Others

Vs

Gurdev Singh

State of Punjab and Others

Vs

Ashok Kumar

Civil Appeal Nos. 1852 and 4772 of 1989

(K. Jagannatha Shetty, V. Ramaswami-II, Yogeshwar Dayal JJ)

21.08.1991

JUDGMENT

JAGANNATHA SHETTY, J

1. These appeals against the decision of the High Court of Punjab and Haryana raise a short issue concerning limitation governing the suit for declaration by a dismissed employee that he continues to be in service since his dismissal was void and inoperative. The High Court has observed that if the dismissal of the employee is illegal, void or inoperative being in contravention of the mandatory provisions of any rules or conditions of service, there is no limitation to being a suit for declaration that the employee continues to be in service.

2. The facts giving rise to these appeals, as found by the courts below, may be summarised as follows :

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3. The respondent in this appeal was appointed as an ad hoc sub-inspector in the District Food and Supply Department of Punjab State. He absented himself from duty with effect from September 29, 1975. On January 27, 1977, his services were terminated. On April 18, 1984, he instituted the suit for declaration that the termination order was against the principles of natural justice, terms and conditions of employment, void and inoperative and he continues to be in service. The State resisted the suit contending inter alia, that the plaintiff's services were terminated in accordance with the terms and conditions of his ad hoc appointment and the suit was barred by time. The trial court accepted the plea of limitation and dismissed the suit, but on appeal the Additional District Judge, Jullundhar decreed the suit. He observed that the termination order though simpliciter in nature was passed as a measure of punishment. The plaintiff's services were terminated for unauthorised absence without an enquiry and he should have been given an opportunity to explain his conduct by holding proper enquiry. On the plea of limitation, learned Additional District Judge held that no limitation is prescribed for challenging an illegal order. Since the order of termination was bad, the suit was not barred by time. In the second appeal preferred by the State the High Court agreed with the view following its earlier decisions.

4. The respondent in this appeal was a Railway Police Constable. He was appointed on November 14, 1977. On March 15, 1979, he was discharged from service for some misconduct. On June 15, 1979, his appeal was rejected by AIG, Railways, Patiala, Punjab. On November 30, 1979, his revision petition was dismissed by the Inspector General of Police, Punjab. In February 12, 1985 he brought a suit seeking declaration that the order discharging him from service and confirmed in the appeal and revision, was illegal, ultra vires, unconstitutional and against the principles of natural justice and he continues to be in service as constable. The trial court dismissed the suit. The appeal preferred by the plaintiff was accepted by the Additional District Judge who decreed the suit as prayed for. He has inter alia stated that the plaintiff was discharged from service in contravention of the mandatory provisions of the rules and as such it has no legal effect. There is no period of limitation for instituting the suit for declaration that such a dismissal order is not binding upon the plaintiff. While affirming that principle, the High Court dismissed the second appeal in limine.

5. These are not the only cases in which the Punjab and Haryana High Court has taken the view that there is no limitation for instituting the suit for declaration by a dismissed or discharged employee on the ground that the dismissal or discharge was void or inoperative. The High Court has repeatedly held that if the dismissal, discharge or termination of services of an employee is illegal, unconstitutional or against the principles of natural justice, the employee can approach the court at any time seeking declaration that he remains in service. The suit for such reliefs is not governed by any of the provisions of the Limitation Act (See (i) State of Punjab v. Ajit Singh ((1988) 1 SLR 96 (P&H)) and (ii) State of Punjab v. Ram Singh. ((1986) 3 SLR 379 (P&H))).

6. First of all, to say that the suit is not governed by the law of limitation runs afoul of our Limitation Act. The statute of limitation was intended to provide a time limit for all suits conceivable. Section 3 of the Limitation Act provides that a suit, appeal or application instituted after the prescribed "period of limitation" must subject to the provisions of Section 4 to 24 be dismissed although limitation has not been set up as a defence. Section 2(j) defines that expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 2(j) also defines, "prescribed period" to mean the period of limitation computed in accordance with the provisions of the Act. The court's function on the presentation of plain is simply to examine whether, on the assumed facts, the plaintiff is within time. The court has to find out when the "right to sue" accrued to the plaintiff. If a suit is not covered by any of the specific articles prescribing a period of limitation, it must fall within the residuary article. The purpose of the residuary article is to provide for cases which could not be covered by any other provision in the Limitation Act. The residuary article is applicable to every variety of suits not otherwise provided for. Article 113 (corresponding to Article 120 of the Act of 1908) is a residuary Article for cases not covered by any other provisions in the Act. It prescribed a period of three years when the right to sue accrues. Under Article 120 it was six years which has been reduced to three years Article 113. According to the third column in Article 113, time commences to run when the right to sue accrues. The words "right to sue" ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted (See (i) Mt. Bolo v. Mt. Koklan (AIR 1930 PC 270 : 57 IA 325 : 1930 ALJ 1188) and (ii) Gannon Dunkerley and Co. Ltd. v. Union of India ((1969) 3 SCC 607 : AIR 1970 SC 1433 : (1970) 3 SCR 47)).

7. In the instant cases, the respondents were dismissed from service. May be illegally. The order of dismissal has clearly infringed their right to continue in the service and indeed they were precluded from attending the office from the date of their dismissal. They have not been paid their salary from the date. They came forward to the court with a grievance that their dismissal from service was no dismissal in law. According to them the order of dismissal was illegal, inoperative and not binding on them. They wanted the court to declare that their dismissal was void and inoperative and not binding on them and they continue to be in service. For the purpose of these cases, we may assume that the order of dismissal was void, inoperative and ultra vires, and not voidable. If an Act is void or ultra vires it is enough for the court to declare it so and it collapses automatically. It need not be set aside. The aggrieved party can simply seek a declaration that it is void and not binding upon him. A declaration merely declares the existing state of affairs and does not 'quash' so as to produce a new state of affairs.

8. But nonetheless the impugned dismissal order has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or court. In Smith v. East Elloe Rural District Council (1956 AC 736, 769 : (1956) 1 All ER 855, 871) Lord Radcliffe observed : (All ER p. 871)

> "An order, ever if not made in good faith, is still an Act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

9. Apropos to this principle, Prof. Wade states (See Wade : Administrative Law, 6th edn., p. 352) : "the principle must be equally true even where the 'brand' of invalidity" is plainly visible; for there also the order can effectively be resisted in law only by obtaining the decision of the court. Prof. Wade sums up these principles : (Ibid.)

> "The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because, he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another."

10. It will be clear from these principles, the party aggrieved by the invalidity of the order his to approach the court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the court within the prescribed period of limitation. If the statutory time limit expires the court cannot give the declaration sought for.

11. Counsel for the respondents however, has placed strong reliance on the decision of this Court in State of M.P. v. Syed Qamarali ((1967) 1 SLR 228 (SC)). The High Court has also relied upon that decision to hold that the suit is not governed by the limitation. We may examine the case in detail. The respondent in that case was a Sub-Inspector in the Central Province Police Force. He was dismissed from service on December 22, 1945. His appeal against that order was dismissed by the Provincial Government, Central Provinces and Berar on April 9, 1947. He brought the suit on December 8, 1952 on allegation that the order of dismissal was contrary to the para 241 of the

Central Provinces and Berar Police Regulations and as such contrary to law and void, and prayed for recovery of Rs 4724/5/- on account of his pay and dearness allowance as Sub-Inspector of Police for the three years immediately preceding the date of the institution of the suit. The suit was decreed and in the appeal before the Supreme Court, it was urged that even if the order of dismissal was contrary to the provisions of law, the dismissal remained valid until and unless it is set aside and no relief in respect of salary could be granted when the time for obtaining an order setting aside the order of dismissal had elapsed. It was observed : (SLR p. 234, para 20)

> "We therefore hold that the order of dismissal having been made in breach of a mandatory provision of the rules subject to which only the power of punishment under Section 7 could be exercised, is totally invalid. The order of dismissal had therefore no legal existence and it was not necessary for the respondent to have the order set aside by a court. The defence of limitation which was based only on the contention that the order had to be set aside by a court before it became invalid must therefore be rejected."

12. These observations are of little assistance to the plaintiffs in the present case. This Court only emphasized that since the order of dismissal was invalid being contrary to para 241 of the Berar Police Regulations, in need not be set aside. But it may be noted that Syed Qamarali brought the suit within the period of limitation. He was dismissed on December 22, 1945. His appeal against the order of dismissal was rejected by the Provincial Government on April 9, 1947. He brought the suit which has given rise to the appeal before the Supreme Court on December 8, 1952. The right to sue accrued to Syed Qamarali when the Provincial Government rejected his appeal affirming the original order of dismissal and the suit was brought within six years from that date as prescribed under Article 120 of the Limitation Act, 1908.

13. The Allahabad High Court in Jagdish Prasad Mathur v. United Provinces Government (AIR 1956 All 114) has taken the view that a suit for declaration by a dismissed employee on the ground that his dismissal is void, is governed by Article 120 of the Limitation Act. A similar view has been taken by Oudh Chief Court in Abdul Vakil v. Secretary of State (AIR 1943 Oudh 368 : 1943 OWN 118 : 207 IC 178). That in our opinion is the correct view to be taken. A suit for declaration that an order of dismissal or termination from service passed against the plaintiff is wrongful, illegal or ultra vires is governed by Article 113 of the Limitation Act. The decision to the contrary taken by the Punjab and Haryana High Court in these and other cases (State of Punjab v. Ajit Singh ((1988) 1 SLR 96 (P&H)) and State of Punjab v. Ram Singh ((1986) 3 SLR 379 (P&H))) is not correct and stands overruled.

14. In the result, we allow the appeals; set aside the judgment and decree of the High Court and dismiss the suit in each case. In the circumstances, however, we make no order as to costs.

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