Secretary, Ministry of Works & Housing Govt. of India and Others

Vs

Mohinder Singh Jagdev and Others

Civil Appeal No. 11378 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

16.08.1996

ORDER

1. Leave granted. We have heard learned counsel on both sides.

2. This appeal by special leave arises from the judgment and order dated 22-3-1994 made by the Division Bench of the Delhi High Court in RFA (OS) No. 27 of 1994. The admitted facts are that the respondent came to be appointed on 7-3-1956 as Section Officer in the Central Public Works Department. Thereafter, the Executive Engineer discovered on 6-10-1956 that he had obtained the appointment on producing false certificates. Consequently, a report was laid under Sections 420, 468 and 127, Indian Penal Code and he was kept under suspension. Independent thereof, exercising the power under Rule 5 of the Central Government Services (Temporary Service) Rules, 1949, his services were terminated by order dated 10-9-1957. The respondent after his acquittal by the criminal court laid the suit in forma pauperis on 13-8-1965 seeking declaration that the termination of his service was wrong, unconstitutional, that he should be deemed to have continued in service and that he was entitled to Rs. 84,000 by way of salary and damages by way of expenses incurred by him to defend the criminal cases etc. The trial Judge (Single Judge of the High Court) by his judgment dated 22-3-1994, though held that the termination order was unconstitutional, since he was terminated without compliance of Article 311(2) of the Constitution, dismissed the suit as barred by limitation. On appeal, the Division Bench held that the suit was not barred by limitation for the reason that he had laid the suit after the rejection of his application for reinstatement and consequent to the acquittal by the criminal court on 8-5-1964 and that, therefore, it was within limitation. The suit was decreed.

3. Ms Binu Tamta, the learned counsel for the Union of India, contended that the Division Bench has committed grievous error of law in decreeing the suit. According to the learned counsel, cause of action for the suit had arisen on 10-9-1957; the limitation for the declaration of the suit is 3 years from the date of the dismissal. Since the suit was filed on 13-8-1965, it was clearly barred by limitation. In support thereof she placed reliance on a decision of this Court in State of Punjab v. Gurdev Singh. [(1991) 4 SCC 1 : 1991 SCC (L&S) 1082 : (1991) 17 ATC 287 : JT (1991) 3 SC 465] The learned counsel also contended that this is not a case of dismissal on the basis of misconduct and criminal charge but is independent thereof and that, therefore, the acquittal does not furnish any cause of action to lay the suit as emphasised by the respondent-plaintiff. The High Court was wrong in laying emphasis in that behalf.

4. Shri Keshav Dayal, the learned Senior Counsel for the respondent, on the other hand, contended that the order of suspension does indicate that the respondent was kept under suspension pending criminal proceedings; he was ultimately acquitted. Thereafter, he made a representation for

reinstatement; on its rejection, the suit came to be laid and, therefore, the suit was not barred by limitation. In support thereof he placed reliance on two judgments of this Court, viz., Babu Lal v. State of Haryana) [(1991) 2 SCC 335 : 1991 SCC (L&S) 488 : (1991) 16 ATC 481] and State of M.P. v. Syed Qamarali. [1967 SLR 228 (SC)] He also contended that the appeal was incompetent since the respondent had impleaded the Union of India as the first party-defendant and the aggrieved person would be only the Union of India and not the Secretary. The special leave petition also was barred by limitation. He also contends that on the peculiar facts and circumstances, since the respondent was under suspension right from 1957 and he had the relief from the Division Bench in 1994 with all consequential benefits, it may not warrant interference under Article 136 of the Constitution.

5. Having given due consideration to the contentions of the counsel and having gone through the facts and circumstances of the case, first question that arises is whether the appeal has been competently laid ? It is not disputed and cannot be disputed that the Union of India can lay the suit and be sued under Article 300 of the Constitution in relation to its affairs. Under Section 79 read with Order 27 Rule 1 Code of Civil Procedure, in a suit, by or against the Central Government, the authority to be named as plaintiff/defendant shall be the Union of India. The Secretary, Ministry of Works and Housing is a limb of the Union of India transacting its functions on behalf of the Government under the Department concerned as per the business rules framed under Article 77 of the Constitution. Therefore, the appeal came to be filed by the Secretary, though wrongly described. The nomenclature given in the cause title as Secretary instead of the Union of India, is not conclusive. The meat of the matter is that the Secretary representing the Government of India had filed the appeal obviously on behalf of the Union of India. Accordingly, we reject the first contention.

6. The question then is whether the delay has been properly explained in filing the special leave petition. The appellants have sufficiently stated the circumstances in which they came to file the special leave petition after the expiry of limitation. It is not in dispute that the counsel who appeared for the Union of India in the High Court had sent his record and intimation of the result after the expiry of limitation. Therefore, the blame has to be laid on the counsel who was irresponsible in not informing the Government, after the appeal was allowed by the High Court. The Government acts only through its officers at diverse stages. The advocate who appeared for the Union of India had forsaken his responsibility without informing the Government of the action to be taken on the result of the decision given by the High Court. Admittedly, after the receipt of the copy of the judgment from the advocate on 1-9-1994 several steps have been taken till filing the special leave petition on 23-1-1995. Proper explanation for 217 days has accordingly been given in the affidavit filed in support of the SLP. We find that the explanation offered by the appellant is well acceptable and is accepted. Accordingly, the delay is not in our view a bar to consider the matter on merits. Accordingly, the delay is condoned.

7. The crucial question is whether the suit is barred by limitation ? Section 3 of the Limitation Act, 1963 (for short, "the Act") postulates that the limitation can be pleaded. If any proceedings have been laid after the expiry of the period of limitation, the court is bound to take note thereof and grant appropriate relief and has to dismiss the suit, if it is barred by limitation. In this case, the relief in the plaint, as stated earlier, is one of declaration. The declaration is clearly governed by Article 58 of the Schedule to the Act which envisages that to obtain "any other" declaration the limitation of three years begins to run from the period when the right to sue "first accrues". The right to sue had first accrued to the respondent on 10-9-1957 when the respondent's services came to be terminated. Once limitation starts running, until its running of limitation has been stopped by an order of the

competent civil court or any other competent authority, it cannot stop. On expiry of three years from the date of dismissal of the respondent from service, the respondent had lost his right to sue for the above declaration.

8. The contention of Shri Keshav Dayal is that the order of suspension has been made pending investigation into the offence. It would contemplate that the respondent has got a right to take action consequent to the result of the criminal case. Since he was acquitted of the charge on 8-5-1964, cause of action had on that day, first arisen to the respondent. We find no force in the contention. Three courses are open to the employer. Firstly to take action in terms of the order of appointment; secondly, according to the conduct rules; and thirdly as a result of criminal case. In this case, the employer had exercised the first option, namely, termination of service in terms of order of appointment.

9. Rule 5 of the Rules contemplates that services can be terminated in terms of appointment. The terms of appointment clearly mentions that it can be terminated at any time without notice. Under those circumstances, the termination is in exercise of the statutory power under Rule 5 of the Rules. The decision of this Court in Babu Lal case [(1991) 2 SCC 335 : 1991 SCC (L&S) 488 : (1991) 16 ATC 481] has no application in this case. Therein, the foundation of cause of action was the misconduct punishable under Section 420 IPC. Having been suspended and dismissed from service for these misconduct, after acquittal he had filed the suit within the limitation. Therefore, the ratio therein is clearly inapplicable to the facts in the case. Equally, the decision of the Constitution Bench in Syed Qamarali case [(1967) SLR 228 (SC)] is inapplicable. Therein, the suit was filed for declaration that he was wrongfully dismissed. Therefore, the dismissal order was the foundation for cause of action. After dismissal of the departmental appeal he laid the suit. Accordingly, the suit came to be filed within limitation. It was held that once the dismissal order was found to be unconstitutional in the eye of law, there is no valid order of termination. As proposition of law, there cannot be any dispute in that behalf. But the question is whether the above ratio is applicable to the facts in this case. As already stated, the employer is entitled to terminate the services of its employee in terms of the order of appointment which confers power to take action in terms thereof. As seen, Rule 5 of the Rules clearly gives power to terminate the services of the temporary servant in terms of the order of appointment. Until the temporary service matures into permanent, he has no right to the post. At any point of time before that right accrues, it is open to the employer to terminate the service in terms of the order of appointment. This question was elaborately considered by a Bench of three Judges of this Court in Gurdev Singh case [(1991) 4 SCC 1 : 1991 SCC (L&S) 1082 : (1991) 17 ATC 287 : JT (1991) 3 SC 465] We respectfully agree with the ratio therein. The High Court wrongly applied the principle of dismissal followed by conviction for misconduct and acquittal thereof.

10. The appeal is accordingly allowed and the judgment and order of the Division Bench is set aside, but, in the circumstances, without costs.