

(1985) 03 KAR CK 0046
In the Karnataka High Court
Case No : C.R.P. No. 628 of 1982

Executive Engineer P.W.D. Yadgiri

APPELLANT

Vs

Abdul Salam

RESPONDENT

Date of Decision : 07-03-1985

Acts Referred:

Limitation Act, 1908 — Section 102, 120, 7

Citation : (1985) ILR (Kar) 1927 : (1986) 1 LLJ 368

Hon'ble Judges : P.A. Kulkarni, J

Bench : Single Bench

Judgement

1. This is a defendant's revision against the judgment and decree dated 16th September, 1981 delivered by the Civil Judge, Yadgiri in a small Cause Suit No. 1 of 1981 decreeing suit.

2. The Plaintiff was working as a Driver in the Public Works Department. On account of his involvement in a criminal case, he was kept under suspension for the period from 10th March, 1971 to 2nd November, 1971. Later on he was taken to duty on 2nd November, 1971. So, the plaintiff claimed the arrears of salary for the period from 10th March, 1971 to 2nd November, 1971.

3. The defendant resisted the suit.

4. The trial court took the view that the right to salary was a recurring right. Therefore the plea of limitation raised by the defendant, according to the trial court, was not applicable to the facts of the case. Hence it decreed the suit. Hence the revision by the defendant.

5. Article 102 of the old Limitation Act 1908 which is similar to Art. 7 of the Limitation Act, 1963, reads as :

"For wages in the Three When the wages case of any other years accrue due." person.

The case of a Government servant for recovery of arrears of pay came up for

discussion before the Supreme Court in *Shri Madhav Laxman Vaikunthe Vs. The State of Mysore*, and it is held therein as :

"The appellant contended that his suit for arrears of salary would not be governed by the three years" rule laid down in Art. 102 of the Limitation Act and that the decision of the Federal Court in *Tarachand's case* AIR 1947 F.C. 23 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 High Court. The claim as regards arrears of salary and allowance is allowed in part only from the 2nd of June, 1971, until the date of plaintiff's retirement from Government service."

Again the matter came up for discussion before the Supreme Court in *Sakal Deep Sahai Srivastava Vs. Union of India (UOI) and Another*, The Supreme Court held at (para 8 at p. 274);

"The only question of some difficulty raised before us is whether Art. 102 or Art. 120 of the Limitation Act of 1908 would apply to the case. After having heard the attractive arguments of Mr. Yogeshwar prasad, we have no doubt that a good deal can be said in favour of the contention that a claim for arrears of salary is distinguishable from a claim for wages. But, our difficulty is that the question appears to us to be no longer open for consideration afresh by us, or, at any rate, it is not advisable to review the authorities of this Court, after such a lapse of time when, despite the view taken by this Court that Art. 102 and 120 of the Limitation Act 1908 was applicable to such cases, the Limitation Act of 1963 had been passed repeating the law, contained in Arts. 102 and 120 of the Limitation Act of 1908, in identical terms without any modification. The legislature must be presumed to be cognizant of the view of this Court that a claim of the nature before us, for arrears of salary falls within the purview of Art. 102 of the Limitation Act of 1908. If Parliament, which is deemed to be aware of the declarations of law by this Court, did not alter the law, it must be deemed to have accepted the interpretation of this Court even though the correctness of it may be open to doubt. If doubts had arisen, it was for the Legislature to clear these doubts. When the Legislature has not done so, despite the repeal of the Limitation Act of 1908, and the enactment of the Limitation Act of 1963 after the decisions of this Court, embodying a possibly questionable view, we think it is expedient and proper to overrule the submission made on behalf of the appellant that the correctness of the view adopted by this Court in its decisions on the question so far should be re-examined by a larger Bench."

In a recent decision of the Supreme Court in *Maimoona Khatun and Another Vs. State of Uttar Pradesh and Another*, the same principle has been followed by the Supreme Court.

6. The arrears of salary claimed in this case pertain to the period from 10th March, 1971 to 2nd November, 1971. The suit is filed in 1981. Therefore the claim is beyond the period of three years. Therefore Art. 7 clearly operates as a bar to the present claim. Therefore the trial court erred in holding that the suit was not barred by limitation. Therefore, under these circumstances, I am of the view that the suit claim is barred by limitation in view of the principle laid down by Art. 7 of the Limitation Act, 1963.

7. Therefore, under these circumstances the judgment and decree passed by the court below are set aside. The revision is allowed. The suit is dismissed.

8. No costs throughout.