

(1955) 07 MAD CK 0023
In the Madras High Court

Govinda Konar

APPELLANT

Vs

Murugan Transports Ltd.

RESPONDENT

Date of Decision : 15-07-1955

Acts Referred:

Citation : (1955) 2 LLJ 491

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Judgement

Ramaswami, J.—This is a civil revision petition filed against the decree and judgment of the learned sub ordinate judge of Dindigul in S.C.S. No. 134 of 1952.

2. The facts are:-The plaintiff was employed under the defendant. He was dismissed from service on 25 January 1949 on account of his having participated in a strike. On the complaint by the employee that he was unjustly dismissed, there was an enquiry by the industrial tribunal, Madurai. The tribunal decided that the dismissal of the plaintiff was unjustified and directed his reinstatement, but the order of reinstatement was silent about the arrears of pay. In these circumstances the plaintiff filed a suit for arrears of salary and it was resisted by the employer on two grounds, viz. (a) on the ground of jurisdiction and (b) limitation.

3. The learned subordinate judge held that he had jurisdiction to go into the controversy because though the order of the industrial tribunal was silent about the arrears of pay till reinstatement from the date of dismissal, the word "reinstate" as defined in the Oxford dictionary means neither more or less than "restore to, replace in lost position, privileges, etc." and therefore "reinstatement" should necessarily include that the plaintiff must get back his pay. On the point of limitation he held that the article of the Limitation Act applicable was Article 7 and that this suit filed in 1952 in regard to a dismissal on 25 January 1949 and an award on 25 May 1949 was hopelessly barred by time. He therefore dismissed the suit with costs. The defeated plaintiff files this civil revision petition.

4. In revision only the point regarding limitation has got to be considered and on a review of the entire circumstances of the case I have come to the same conclusion as the learned subordinate judge regarding limitation. Here are my reasons.

5. A suit for wages under the Employers and Workmen (Disputes; Act, 1860, Section 1, was governed by Article 4 which has now been repealed by Act XX of 1937. Suits for the wages of household servants, artisans or labourers fall under the present Article 7. Suits for wages not falling under any specific article of the Limitation Act are governed by Article 102. Articles 7 and 101 expressly provide for suits for wages in particular classes of cases. Article 102 is a general article providing for suits for wages not otherwise expressly provided for. It follows that Article 102 will apply only if none of the specific articles applies to the case. Thus, a suit for the wages of household servants, artisans or labourers falls under Article 7 and would not be governed by Article 102 prescribing a longer-period of limitation of three years (see note I, Article 7, p.975 of Chitaley and Annaji Rao, the Indian Limitation Act, 3rd, 1952 edn., Vol. 2].

6. Therefore, the point for determination is whether the plaintiff was employed as an artisan as contended for by the defendant. That a bus-driver is an artisan is laid down in *Sewaram v. Lachminarayan* 5 Rang. 477. It was held that a motorcar driver is an artisan within the meaning of Article 7 of Schedule I of the Limitation Act and that he must therefore sue for his wages within one year from the date when his wages accrue due and that he cannot be given the benefit of the longer period under Article 102. This decision was come to on the ground that according to Webster's dictionary an artisan is one trained to mechanical dexterity in some mechanical " art or trade and that as motor-car driver is required at least to know how to start the car, how to steer it and how to stop it and for such purposes he must possess some skill in manipulating the different parts of the mechanism, he would fall within one category of an artisan. The decision was followed in *Khagendra Nath Chatterjee Vs. Kanti Bhushan Banerjee*, and in *Sitaram v. Jagannath* AIR 1936 Lah. 661.

7. In *Sitaram v. Jagannath* AIR 1936 Lah. 661, it was also further found that where for instance a motor-driver is also provided with board and lodging in his master's house as part of his wages he could also be considered to fall within the definition of a domestic servant which is the same thing as a household servant as that expression is used in Article 7 of the Limitation Act. Jai Lal, J., explained this as follows:

Now, a household servant again is nowhere defined in any statute, but the implications of the expression are to be gathered from a discussion of the subject on p. 41, et seq. of *A Treatise on the Law of Master and Servant* by Charles Manley Smith, edn. 8. It is remarked there that no general rule can be laid down as to who do and who do not come within the category of domestic or menial servants, and the following definition by Roche, J., is cited:

Domestic servants are servants whose main or general function it is to be about their employers' persons or establishments, residential or quasi-residential, for the purpose of ministering to their employers' personal or ordinary needs or wants or to the needs or wants of those who are members of such establishments, including guests.

Now, applying this test, a motor-driver and especially one who is provided with board and lodging by the employer, would come within the definition of a domestic servant and I have no reason to think that the expression "household servants" in India is used in a different sense to the expression "domestic servant" in England. The petitioner could be called upon at any time during the day or the night to drive the motor-car for the employer, the members of his family or his guests according to their reasonable requirements, and as such, he would come within the definition of a household servant.

8. On this construction that the plaintiff is an artisan within the meaning of Article 7 of the Limitation Act, the suit is plainly barred by limitation.

9. The fact that though reinstated the petitioner will not recover arrears of wages ought not to distress us because as pointed out by Justice Story in *Belt v. Morison*, a statute of limitation instead of being viewed in unfavourable light as an unjust and discreditable defence should have received such support from Courts of Justice as would have made what it was intended emphatically to be a statute of repose "or as Story also puts it in his *Conflict of Laws* (Commentaries on the "Conflict of Laws" by Joseph Story, 8th edn. p. 794). Laws thus limiting suits are founded on the noblest policy. They are statutes of repose to quiet titles to suppress frauds, and to supply the deficiency of proofs arising from the ambiguity and obscurity on the antiquity of transactions. Controversies are limited to a fixed period of time lest they should be immortal while men are mortal--" *Ne autem lites immor tales essent dum litigantes mortales sunt.*"

10. The conclusion of the learned subordinate judge is correct and the civil revision petition is dismissed with costs.