

(1954) 05 AHC CK 0011
In the Allahabad High Court

Hafizuddin

APPELLANT

Vs

Governor-General of India in Council

RESPONDENT

Date of Decision : 07-05-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
General Clauses Act, 1897 — Section 16

Citation : (1955) 1 LLJ 134

Hon'ble Judges : Gurtu, J;Agarwala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Agarwala, J.—This is a plaintiff's appeal arising out a suit which was instituted in December 1942 for a declaration that the order of the Commissioner of Income tax, dated 19 August 1932, discharging the plaintiff from service was illegal and void and that the plaintiff still continued to be in service. The plaintiff also claimed a decree for arrears of salary for all the period that had elapsed since his discharge from service till the institution of the suit. The plaintiff's case briefly stated was as follows. The plaintiff was appointed an assistant incometax officer by the United Provinces Government under their notification No. 343, dated 7 May 1921, and was confirmed as incometax officer in January 1924. In August 1932 when the plaintiff was drawing a salary of Rs. 590 per month, the incometax department conceived of a scheme to effect reduction in expenses in that department by discharging some incometax officers and in their places appointing inspectors of incometax on leaser salary. The scheme was proposed by the Incometax Commissioner, United Provinces and Central Provinces, and was approved by the Government of India. As a part of the scheme directions were given by the Government of India for selecting persons for discharge. Quite contrary to these directions the Commissioner of Incometax included the name of the plaintiff as one of the persons to be discharged. A notice of discharge was thereupon issued by the Commissioner of incometax to the plaintiff-appellant on 19 August 1932 stating that the plaintiff's services would be dispensed with

effect from 31 October 1932, but that he would be allowed leave with full pay up to the first week of January 1935. The plaintiff was in fact discharged from the office of incometax officer on 31 October 1932, and compelled to go on leave. While he was on leave he was re-employed as an assistant incometax officer with effect from 21 December 1934 upon a lower salary. This re-employment rendered ineffective the order of discharge and the plaintiff became entitled to draw the emoluments equivalent to the pay he was drawing before the illegal order of discharge was passed. Since, however, the plaintiff was technically discharged he made representations to the Commissioner of incometax and to the Government of India against his retrenchment. His representations were finally rejected by an order, dated 14 December 1936, which was communicated to him on 23 December 1936. The plaintiff continued to work as re-employed assistant incometax officer up to March 1935 when he was employed as inspector of incometax which office he held up to April 1938, when his services were completely dispensed with. The plaintiff then served a notice upon the Governor-General of India in Council on 23 July 1942 as required by Section 80 of the CPC and instituted the suit which has given rise to this appeal for the reliefs already stated.

2. The plaintiff's case was that he, having been appointed by the Government of United Provinces, could not have been discharged or dismissed by the Commissioner of incometax as the latter was subordinate to the appointing authority. For this contention he relied on Section 96B of the Government of India Act, 1919. He also pleaded that his discharge was contrary to the Civil Service Regulations and the directions of the Government of India. He sought to save the bar of limitation for the suit on the ground, firstly that he was continuously in employment up to April 1938, and secondly that the final rejection of his representation was communicated to him on 23 December 1936 and he had filed the suit within six years of that date. Alternatively he pleaded that the order of discharge being void and inoperative he was still in service and the cause of action accrued to him on the first of every month when his salary was not paid to him.

3. The defence to the suit was that the order of discharge was valid as he was discharged by the Government of India, an authority superior to the Provincial Government which appointed him, that his re-employment as assistant commissioner and subsequently as inspector of incometax was a fresh appointment and not in continuation of the old appointment, that the suit was barred by limitation, that the plaintiff could be discharged at His Majesty's pleasure at any time, that he had no cause of action for the suit and that the suit was barred by estoppel because the plaintiff had accepted the benefits under the retrenchment scheme.

4. The court below found that the plaintiff was discharged by the Commissioner of incometax in obedience to the instructions of the Government of India, that therefore the order of discharge was lawful and valid, that the plaintiff's suit was

barred by time, that he could not avail of the order of re-employment to save the bar of limitation that the plaintiff's conduct amounted to acquiescence in his retrenchment, but that the suit was not barred by estoppel. The suit was consequently dismissed with costs.

5. In this appeal three points have been urged before us by the learned Counsel for the appellant. Firstly that the order of discharge was invalid u/s 96B of the Government of India Act, 1919, because it was made by an authority subordinate to the appointing authority, secondly that the suit was not barred by limitation and thirdly that there was neither acquiescence nor estoppel.

6. The plaintiff was appointed an assistant incometax officer in 1921 and he was discharged from that office on 31 October 1932. At both these relevant dates the Government of India Act, 1915, as amended in 1919, was in force. Under S 96B of the Act every person in civil service of the Crown in India held office during His Majesty's pleasure. In other words, he could be dismissed or discharged at any time and there was no warranty of service. There were, however, two limitations to this rule. The first was that the rule was "subject to the provisions of the Act and of rules made thereunder," and the second was that no person in the service may be dismissed by any authority subordinate to that by which he was appointed. So far as the first limitation is concerned, the plaintiff did not complain that any provisions of the Government of India Act (apart from the second limitation mentioned above) were violated. He no doubt complained that the rules framed under the Government of India Act, namely, the Civil Service Regulations, and the directions laid down by the Government of India, were not complied with. So far as the non-compliance with the rules and directions is concerned, it was held by the Privy Council that the non-compliance did not entitle a civil servant of the Crown to sue the Crown in civil courts for reinstatement or otherwise because the rules were merely moral obligations on the Crown and not enforceable in a court of law see AIR 1937 31 (Privy Council) and AIR 1937 27 (Privy Council) This point was, therefore, not pressed before us in appeal.

7. The next question is whether the plaintiff was dismissed by an authority subordinate to that by which he was appointed.

8. Admittedly the plaintiff was appointed as an assistant incometax officer by the Government of United Provinces, as the Incometax Act in force in 1921 empowered the Provincial Government to make such appointments. In 1922, the Incometax Act was overhauled and the scheme under the Act of 1922 was entirely different. Under the Act, Section 5 provided for four classes of incometax authorities, viz:

- (a) The Central Board of Revenue,
- (b) Commissioners of Incometax,
- (c) assistant commissioners of incometax, and

(d) incometax officers.

The Governor-General in Council was to appoint the Commissioners of Incometax and the assistant commissioners of incometax while the incometax officers were (subject to the control of the Governor-General in Council) to be appointed by the Commissioner of Incometax. The assistant commissioners of incometax and incometax officers were to be subordinate to the Commissioners of Incometax. There was no specific provision in the Incometax Act, 1922, as to the authority which could dismiss the incometax officers. Section 16 of the General Clauses Act empowers the person who has power of appointing an officer to dismiss him. Incometax officers were, therefore, under the Act of 1922 dismissable by the Commissioners of Incometax. The Commissioner of Incometax was subject to the control of the Governor-General in Council and apparently, so far as the Act was concerned, not of the Provincial Government. It was, therefore, urged by Mr. Gopalji Mehrotra, learned standing Counsel, that even if the dismissal of the plaintiff was by the Commissioner of Incometax, it could not be said that it was by an authority "subordinate" to the authority appointing the plaintiff. No doubt the word "subordinate" used in Section 96B is not the same as the word "inferior." The Commissioner of Incometax may be an "inferior" authority in point of rank to the Governor of a Province but he cannot be said to be his "subordinate." A person is subordinate to another when he is bound under law to carry out the orders of the latter when he is under his control.

9. But it appears that the Governor-General in Council delegated to the Governors of the Provinces the power of hearing appeals from the orders of the Commissioners of Incometax-vide letter No. 778 F, dated 13 March 1922. In this letter it was stated that the Governor-General in Council desires to utilize the agency of the Governor in Council of each Governor's province in the following matters only in relation to incometax:

(i) The appointment by the Commissioner of incometax of any person to the substantive post of assistant commissioner of incometax or incometax officer shall be subject to the previous approval of the Governor in Council.

(ii) Any assistant commissioner of incometax or incometax officer who has been dismissed or removed from office or whose increments have been withheld by the Commissioner of Incometax shall have in right of appeal to the Governor in Council.

10. In view of this delegation of authority it cannot be legitimately maintained that the Commissioner of Incometax was not an authority subordinate to the Governor in Council in respect of the matters referred to in the above letter, namely, in the matter of appointment, dismissal or removal of assistant commissioners of incometax and incometax officers.

11. Again it was urged by the learned standing Counsel that since under the provisions of the Incometax Act, 1922, the appointing as well as the dismissing authority was the Commissioner of Incometax, it was lawful for the

Commissioner of Incometax to dismiss the plaintiff, even though he was appointed by the Provincial Government. This argument has no force. The Constitutional Law of India was contained in the Government of India Act, 1915, as amended in 1919. This was the fundamental law of the land and no law made by any legislative authority in India could override the provisions of that Act. The Commissioner of Incometax, therefore, if he was subordinate to the Provincial Government, had no authority to dismiss the plaintiff who had been appointed by the Provincial Government as his dismissal by the Commissioner of Incometax would violate the provisions of Section 96B of the Government of India Act. It must, therefore, be held that the Commissioner of Incometax was authorized to dismiss only those incometax officers who had been appointed to that office by a Commissioner of Incometax.

12. This leads us to a consideration of the question whether the plaintiff was dismissed or discharged by the Government of India. The facts bearing upon the matter are these.

13. Sometime in the year 1931 a campaign of retrenchment in the incometax department was taken in hand. We have on the record a copy of the office memorandum, dated 3 August 1931, issued by the Government of India, Finance Department, in which certain principle for selecting individuals for discharge were laid down. It appears that the Commissioner of Incometax, United Provinces and Central Provinces, submitted a scheme of retrenchment suggesting the names of five incometax officers to be retrenched. The plaintiff was one of the persons so suggested for retrenchment. It was stated that his work was consistently unsatisfactory and that this could be proved from inspection notes or confidential reports. Upon this the Government of India wrote a demi-official to the Commissioner of Incometax. This demi-official is dated 8 July 1932. It stated thus that:

We generally agree to your proposals, but before we refer them to the Finance Department there are some points which need clearing up.

* * * 4. As regards the particular incometax officers who are to be retrenched, I presume that Messrs. Sheo Bux Singh and Babu Prasad have each put in thirty years" service. As regards Messrs. Hafizuddin Khan, Agarwala and Edwards, I presume that their work has been consistently unsatisfactory and that this can be proved from inspection notes or confidential report. Please say if this is so and, if so, send us extracts from inspection notes or confidential reports. Apparently all these officers will be entitled to the retrenchment concessions.

The Commissioner of incometax replied to this on 13 July 1932, the relevant portion of which runs as follows:

4. With regard to the five incometax officers to be retrenched, I have no personal knowledge of their work, but what I said in my notes on them was gleaned from the confidential notes and was also based on the remarks of the assistant commissioners whose conference was held on 26 ultimo. Extracts from

inspection notes cannot be collected without much loss of time; but extracts from confidential reports as regards each officer concerned are attached herewith.

Apparently the note about the plaintiff was also enclosed.

14. On 15 August 1932, the Central Board of Revenue wrote to the Commissioner of Incometax:

The Government of India have agreed to the retrenchment of five incometax officers of the United Provinces Incometax department, and to the abolition of their posts, together with that of one assistant income, tax officer which is lying vacant at present. They have also agreed to the creation of six posts of inspectors, first grade, on Rs. 150-25/2-250 and six posts of inspectors, second grade, on Rs. 80-10-100-7-142-8-150 now.

Will you kindly submit your proposals officially so that formal orders may be issued? In the meantime, notices can be served on the five incometax officers concerned. The retrenched incometax officers will receive the retrenchment concessions if they fulfil the requisite conditions.

Thereupon the Commissioner of Incometax issued a notice to the plaintiff on 19 August 1932 informing him that

under the special retrenchment scheme of the department, you have been brought under reduction and will have to leave office from the afternoon of 31 October 1932. An officer will be sent to relieve you on that date. You will be told in due course as to who your reliever will be.

You will receive the retrenchment concessions if you fulfil the requisite conditions.

On 21 August 1932, the Commissioner of Incometax, in reply to Board's demi-official dated 15 August 1932, wrote to the Secretary, Central Board of Revenue, informing it that in anticipation of sanction, the five incometax officers who were to be retrenched have been served with notices to demit office in the afternoon of 31 October 1932. He recommended that the posts of the five officers be abolished. The sanction asked for was then given by the Government of India by their letter dated 6 September 1932. The letter reads:

In reply to your letter quoted above, I am directed to convey the sanction of the Government of India (1) to the retrenchment of five posts of incometax officers and one of the assistant incometax officers, which is vacant, and to the grant to the retrenched officers of such of the retrenchment concessions sanctioned by the Government of India as are applicable in each case....

The plaintiff sought an interview with the Commissioner of Incometax. He was granted an interview, but nothing came out of it. The Commissioner of Incometax wrote to him on 19 September 1932, that the order discharging him would stand. The plaintiff made a representation on 26 September 1932 to the Commissioner of Incometax against his retrenchment. The representation was rejected by the Commissioner by his order dated 12 October 1932. The discharge

of the plaintiff from his office of the incometax officer was notified on 15 August 1932, and Mr. Sampat Kumar Gupta was directed to take over from the plaintiff on 31 October 1932. The applicant then, in accordance with the conditions for receiving the benefits under the retrenchment order, applied for leave by an application, dated 18 October 1932. He was granted this leave. The leave was also notified in the United Provinces Gazette, dated 15 November 1932. The plaintiff made various representations to the Commissioner of Incometax as also to the Government of India, but without success. The plaintiff then asked for the reasons for his retrenchment. The incometax department found it difficult to assign the reasons. He was, however, informed that he was retrenched because his work was found unsatisfactory. The reason assigned for the plaintiff's discharge was rather unhappily worded. The true reason was that he was retrenched because his post was abolished and he was selected for retrenchment because his work was unsatisfactory. One representation by the plaintiff to the Governor-General is printed at p. 158 of the paper book and it is dated 20 February 1933, and another is dated 24 March 1933, and is printed at p. 16. The Government of India replied that they were not prepared to interfere on the plaintiff's behalf. The plaintiff asked the Government of India to refer the matter of the adverse entries against him to the Public Service Commission. The Government of India replied that they did not propose to take any further action in the matter-vide their letter, dated 6 July 1933. The plaintiff wanted to appeal to the Secretary of State for India in Council. He was informed that there was no such right of appeal but that the Governor-General in Council had treated the appeal as a memorial and that his memorial had been withheld. The plaintiff asked for permission to practise as incometax adviser during the period of leave granted to him preparatory to retirement. The Central Board of Revenue refused such permission by its letter, dated 18 May 1933. On 15 February 1935, the Government of India approved of the appointment of the plaintiff, "a retrenched incometax officer" to one of the posts of the assistant incometax officers with effect from 21 December 1933 up to 31 March 1935. He was to get a pay of Rs. 250 per memsem in addition to his pension. The plaintiff consented to the application to him of the rules contained in the Re-employed Personal Rules, 1932-vide his letter dated 4 June 1935. He was, thereupon, granted compensation pension of Rs. 127-12-0 with effect from 2 January 1935. Then the plaintiff was employed as an inspector of incometax on Rs. 250 in the scale of Rs. 150-25-250. The Government of India sanctioned this appointment by their letter of 27 June 1935. The plaintiff made representations to the Government of India through Sir Mohammad Yaqub, M.L.A. The Government of India informed Sir Mohammed Yaqub that the plaintiff had been selected for discharge under the retrenchment rules and (despite repeated representations from him) the orders selecting him for discharge still held good and that there was no question of his having been "reinstated," and that he had literally been "re employed" on a post of lower status. A new Commissioner of Incometax was prevailed upon by the plaintiff to intercede on his behalf with the Government of India. The Government of India by a letter, dated 7 September 1937, refused to reconsider

his case and to re-appoint him as an incometax officer.

15. It is clear from the above narration of facts that though the actual order of discharge of the plaintiff was passed by the Commissioner of Incometax, the action of the Commissioner of Incometax had the previous sanction of the Government of India and was also subsequently confirmed and acted upon by them. The Government of India has been consistently sticking to the decision that the plaintiff had been discharged from his office of the incometax officer and that after his discharge he was re-employed in a post of lower status.

16. It is true that the actual order of discharge was passed by the Commissioner of Incometax and that therefore it could be said that he was discharged by the Commissioner of Incometax. It could also be said that the previous sanction of the Government of India could not convert the order of discharge passed by the Commissioner of Incometax into an order of discharge by the T.C. Nilamegham Pillai and Another Vs. Secretary of State, Nor could the dismissal of an appeal preferred by the plaintiff to the Government of India convert the discharge by the Commissioner of Incometax into a discharge by the Government of India—vide *Suraj Narain Anand v. The North-West Frontier Province* AIR 1942 F.C. 3 in the present case, however, we find that over and above the sanction accorded by the Government of India to the order of discharge made by the Commissioner of Incometax and the dismissal of the appeal to the Government of India preferred by the plaintiff against his order of discharge, there is the undoubted fact that the Government of India has repeatedly accepted the position that the plaintiff has been discharged under its own directions. Where a superior authority ratifies and acts upon an order of discharge passed by a subordinate authority the discharge by the subordinate authority becomes in substance, both in fact and in law, a discharge by the superior authority. In this state of affairs the plaintiff must be deemed to have been discharged from his office by the Government of India on the date on which his discharge was ratified and acted upon by them and the plaintiff cannot complain that his discharge was illegal by reason of the provisions of Section 96B of the Government of India Act.

17. In this view of the matter the other questions that were argued in the appeal are not necessary to be decided. We may, however briefly express our opinion as regards them as well. The suit is clearly barred by limitation. The article applicable to the suits like the present in so far as the relief for declaration is concerned is Article 120 which provides a period of six years from the accrual of the cause of action. The cause of action to the plaintiff accrued when he would be deemed to have been dismissed by the Government of India. He must be deemed to have been dismissed by the Government of India when the Government of India ratified and acted upon the order of discharge passed by the Commissioner of Incometax. This was done by the Government of India more than six years before the suit.

18. The suit for the recovery of arrears of salary is governed by Article 102 of the Limitation Act. The plaintiff could not sue for more than three years' salary. His

suit for recovery of arrears of salary for a period of more than three years prior to the institution of the suit is, therefore, clearly barred by time. If he had not in effect been discharged by the Government of India and if the order of discharge by the Commissioner of Incometax was illegal, he would be deemed to be still in service, and in that case his suit for recovery of the arrears of salary for a period of three years prior to the suit would have been within time. As, however, the order of discharge has been held by us to be valid, he is not entitled to any salary after the date of his discharge.

19. The suit is also barred by the principle of estoppel. After the plaintiff was discharged from service, he applied for the grant of benefits under the retrenchment scheme by means of an application, dated 18 October 1932. He fully enjoyed those benefits and then accepted his re-employment as an assistant incometax officer and then as an inspector of incometax and drew salary for these posts. He also accepted the retrenchment pension of Rs. 127-12-0 which was granted to him, He cannot, therefore, blow hot and cold at the same time. Having accepted the benefits under the retrenchment scheme he is estopped from challenging the order of discharge. The suit was rightly dismissed.

20. There is no force in this appeal which is dismissed with costs.