
(1984) 08 RAJ CK 0046
In the Rajasthan High Court
Case No : Civil Writ Petition No. 612 of 1972

Hazari Lal

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 08-08-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 276

Citation : (1984) WLN 569

Hon'ble Judges : M.C. Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.P. Gupta, J.—The only question which has been raised in this writ petition is as to whether the petitioner is entitled to his emoluments including wages for the period before his reinstatement.

2. The petitioner was employed as a "Rakshak" in the Northern Railway Workshop at Bikaner. He was suspended w.e.f. March 24, 1962. charge-sheet was served upon him and as he was found guilty of the charge, he was removed from the railway service on Dec. 1, 1962. The petitioner thereupon filed a suit in the court of (sic)Munsif, Bikaner, which was decreed by the learned Mubsif on May 29, 1967. The trial court gave a decree in (sic)favour of the petitioner declaring that the order of his removal was null and void and was of no effect and that the petitioner should be deemed to have continued in Railway service even after December 1, 1962. The decree also contained a recital that the petitioner was entitled to his salary in accordance with his grade pay. The railway administration filed an appeal against the decree passed by the learned Muosik Bikaner but the appeal was dismissed by the learned Civil Judge, Bikaner by his judgment and decree dated August 10, 1970. Thereafter the petitioner was reinstate on his post w e f. May 22, 1971.

3. The petitioner has claimed in this writ petition the arrears of emoluments from

December 1, 1962 to the date of his reinstatement i.e. May 22, 1971. the respondents have not disputed the facts so far as the dismissal of the petitioner from railway service and the subsequent passing of the decree by the civil court in the suit filed by the petitioner, Holding his dismissal as void and the eventual reinstatement of the petitioner on May 22, 1971, are concerned. However, it was stated by the respondents that the emoluments from the date of removal to the date of reinstatement were not paid as no decree was passed to that effect and that arrears preceding a period of 3 (sic) yrs. prior to the date of reinstatement, could not be paid. It was submitted that even if a suit would have been filed by the petitioner, he could not get arrears of (sic) emoluments for a period beyond three years preceding the date of the suit. It was also submitted by the respondents that the petitioner filed an execution application before the trial court, but the same was dismissed on the ground that the decree passed on May 29, 1967 was declaratory in nature. Then the petitioner filed an appeal which was also dismissed on May 8, 1971 and further a second appeal has been filed by the petitioner in this Court and thus it was submitted that as the petitioner was availing an alternative remedy of executing the decree passed by the Civil Court, no relief should be granted to the petitioner in this writ petition. It was also submitted that payment of arrears of emoluments was barred under Order 2, Rule 2 Civil Procedure Code.

4. So far as the question of alternative remedy is concerned, the two courts below have held that a decree passed by the learned Munsif on May 29, 1967 which was upheld by the learned Civil Judge on appeal on August 10, 1970 was merely a declaratory decree and the petitioner could not get arrears of emoluments in execution of the said decree. It has also been stated at the Bar that the execution second appeal filed by the petitioner has also been dismissed. Learned Counsel appearing for the petitioner also undertakes that if any proceedings in respect of the execution matter are still pending, the same shall be withdrawn by the petitioner.

5. It may be observed that if the earlier suit only related to the quashing of the order of dismissal and then proceedings under Article 276 of the Constitution in respect of payment of arrears of emoluments cannot be held to be barred under Order 2, Rule 2 CPC. Their Lordships of the Supreme Court took a similar view in *Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh*, It was observed by their Lordships of the Supreme Court in the aforesaid case as under:

The High Court has disallowed to the appellant his salary prior to the date of the suit. The Bit of Order 2, Rule 2 of the CPC on which the High Court apparently relied may not apply to a petition for high prerogative writ under Article 226 of the Constitution.

6. The same view was again reiterated by the Supreme Court in *The State of Madhya Pradesh Vs. The State of Maharashtra and Others*, and it was observed that Order 2, Rule 2 CPC only bars a claim for which the plaintiff has omitted to sue or which he had relinquished with knowledge that he has a right to sue in

respect of that relief, but at the time of tiling of the sun for getting the order of dismissal set aside, it was not a right in existence as such the petitioner's claim cannot be held to be barred because of the provisions of Order 2, Rule 2 CPC.

7. Now coming to the question of limitation, the contention of the learned Counsel for the respondents cannot be upheld. It has been held by their Lordships of the Supreme Court in *Maimoona Khatun and Another Vs. State of Uttar Pradesh and Another*, that although Article 102 of the Limitation Act of 1908, which is now equivalent to Article 7 of the Limitation Act of 1963, was applicable to the claim for wages in such cases; yet the wages accrued due only when the order of dismissal or removal was set aside by a decree of a civil court or otherwise and the employee is reinstated as a result thereof. The pertinent observations of their Lordships in *Maimoona Khatun's* case AIR 1980 SC 1773 in this context may be usefully extracted as under:

It means to us that if we take the view that the right to sue for the arrears of salary accrues from the date when the salary would have been payable but for the order of dismissal and not from the date when the order of dismissal is set aside by the Civil Court, it will cause gross and substantial injustice to the employee concerned who having been found by a court of law to have been wrongly dismissed and who in the eye of law would have been deemed to be in service would still be deprived for no fault of his, of the arrears of his salary beyond three years of the suit which, inspite of his best efforts he could not have claimed, until the order of dismissal was declared to be void Such a course would in fact place the Government employees in a strange predicament and given an undeserving benefit to the employers who by wrongfully dismissing the employees would be left only with the responsibility of paying them for a period of three years prior to the suit and swallow the entire arrears beyond this period without any legal or moral justification. This aspect does not appear to have been noticed by the courts which have taken the view that the starting point of limitation would be three years from the date of the suit and was for the first time noticed by this Court in *The State of Madhya Pradesh Vs. The State of Maharashtra and Others*, which seems to us to righted a wrong which was long over due.

8. Thus, it is firmly established on the basis of the aforesaid decision of their Lordships of the Supreme Court that where an employee is dismissed or removed from service and subsequently reinstated either on appeal or on account of the order of dismissal or removal being set aside by a decree of a civil court or otherwise, the starting point of limitation for recovery of arrears of salary would not be the date of the order of dismissal or removal but the date when the right actually accrued to the employee, namely the date of restatement by the appointing authority where no suit is filed or the date of the decree setting aside the order of dismissal or removal when suit is filed and decreed.

9. Thus, the right to claim arrears of emoluments accrued to the petitioner on August 10, 1970 when the learned Civil Judge affirmed the decree setting aside

the removal of the petitioner. The present writ petition was filed on March 2, 1972, well within the period of 3 years, which has been provided as the period of limitation under Article 7 of the Limitation Act, 1963, from the date when the wages accrued due in the present case. The wages accrued due to the petitioner on August 10, 1970. the claim for arrears of emoluments was rightly presented before this Court within the period of limitation provided under Article 7 of the Limitation Act. There is no other reason why the petitioner should be deprived of arrears of emoluments when the order of his removal from railway service has already been set aside by a decree of a civil court and in pursuance thereof the petitioner has already been reinstated on May 22, 1971.

10. In the result, the writ petition is allowed, and an order in the nature of mandamus is issued to the respondents directing them to make payment of arrears of emoluments to the petitioner from the date of his removal from service, i.e. December 1, 1962 upto the date of reinstatement i.e. May 22, 1971, if the same has not been paid so far. The parties are left to bear own costs of this writ petition.