

(2005) 07 RAJ CK 0010
In the Rajasthan High Court
Case No : Civil Special Appeal No. 1 of 1991

Kanti Lal and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 18-07-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 12, Order 11 Rule 14, 34, 80
Contract Act, 1872 — Section 25(3)
Foreign Jurisdiction (Extra Provincial Jurisdiction) Act, 1947 — Section 7
Limitation Act, 1908 — Article 102
Limitation Act, 1963 — Article 113, 7, 8, 10
States Reorganisation Act, 1956 — Section 10, 115(7), 116, 117, 86

Citation : (2005) 4 RLW 2823 : (2005) 4 WLC 408

Hon'ble Judges : Rajesh Balia, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : L.R. Mehta and M.R. Mehta, for the Appellant; B.L. Bhati, A.G.A., for the Respondent

Judgement

Dinesh Maheshwari, J.—The plaintiff have preferred this intra-court appeal against the judgment dated 21.11.1990 passed by the learned Single Judge in Civil First Appeal No. 31/1988, whereby the learned Judge dismissed the appeal filed by the plaintiffs and maintained the judgment and decree dated 22.12.1987 passed by the District Judge, Sirohi in Civil Suit No. 22/1971, whereby, the suit filed by the plaintiffs for recovery of the alleged arrears of salary, pension and gratuity of late Tara Chand Dosi was partly decreed only towards the amount of pension and gratuity against the defendant No. 1 State of Rajasthan and rest of the claim was disallowed.

2. The plaintiff appellants are heirs of late Tara Chand Dosi who was an Assistant Engineer in the erstwhile State of Sirohi having initially entered the service on 4.7.1918. An order appointing him Assistant Engineer, Abu Road was passed on 22.1.1948. While he continued to serve as such, on 8.11.1948, the then Sirohi State entered into a merger agreement with the Government of India. The

administration of merged Sirohi State was handed over to the then State of Bombay on the eve of commencement of the Constitution of India. However, certain territories in the State of Sirohi of Pindwara, Reodar and Bhawari were not taken over by the State of Bombay and the administration thereof was handed over to the then Government of United State of Rajasthan by a notification dated 24.1.1950 under the Extra Provincial Jurisdiction Act, 1947.

3. Late Tara Chand Dosi was the Assistant Engineer, Abu Road in the Sirohi State at the time of merger of Sirohi with the Dominion of India and the Abu Road area fell in the administration of the State of Bombay under the merger order dated 25.1.1950. There is no dispute about the fact that late Tara Chand Dosi continued to serve under the State of Bombay till 31.5.1950 when he was relieved in pursuance to an order passed by the Government of Bombay on 26.4.1950.

4. The plaintiffs by filing the suit on 21.8.1971 levied a claim for arrears of salary of late Tara Chand from 5.2.1936 to 23.1.1948 and then from 1.6.1950 to 31.5.1955 and of pension and gratuity.

5. The claim of arrears of salary had two facets. The amount of salary for the period 5.2.1936 to 23.1.1948 of Rs. 16,305.35 was claimed on the ground that this period of break in service was condoned by the erstwhile State of Sirohi and payment for this period ought to have been made. An amount of Rs. 13,125/- was claimed towards salary from 1.6.1950 to 31.5.1955 on the ground that relieving of late Tara Chand by State of Bombay on 31.5.1950 was illegal and he could not have been retired before attaining 60 years of age which he would have attained only on 31.5.1955. Further, according to the plaintiffs, on correct calculation of the pension payable he was entitled for an amount of Rs. 6,492.03 and for gratuity of Rs. 7650/-.

6. The suit was filed on 21.8.1971 against the State of Rajasthan and the Executive Engineer, Public Work Department (South Division) (Building & Roads), Sirohi after serving a notice u/s 80, C.P.C. on 25.10.1970 on the Chief Secretary to the Government of Rajasthan, the Collector, Sirohi and the Executive Engineer, Public Works Department (South Division) (Buildings and Roads), Sirohi.

7. The claim so made by the plaintiffs was contested by the defendants primarily on the grounds that the headquarter of late Tara Chand Dosi continued at Abu Road and no orders were passed by the Rajasthan Government for changing of the headquarter. On 2.3.1950, an order was issued by the Administrator of Abu and Abu Road area asking for the options from the employees about their desire to be absorbed in Rajasthan or Bombay and in pursuance thereof late Tara Chand submitted the option seeking absorption in Bombay province and, therefore, he was serving under the Bombay Province and the Bombay Government relieved him from services on 31.5.1950. He was never absorbed in the services in Rajasthan State and, therefore, claim on the basis of the retirement on attaining the age of 60 years on 31.5.1955 was entirely baseless. It was also pointed out

that late Shri Dosi was relieved as back as on 31.5.1950 by the Bombay State and he had expired on 17.1.1960 and the suit filed by the plaintiffs was hopelessly barred by limitation.

8. The central and pivotal question involved in the case obviously relates to status of late Tara Chand upon merger of the erstwhile Sirohi State and as to whether the plaintiffs could maintain a claim against the State of Rajasthan? Of course, another serious question remains as to whether the suit is within limitation?

9. After considering the pleadings of the parties the learned Additional District Judge, Sirohi in the first place, on 29.8.1973 framed only the preliminary issue as to whether the suit was within limitation ? After hearing the parties, the learned Additional District Judge by his judgment and decree dated 19.3.1974 came to the conclusion that the suit was hopelessly barred by time. The learned Judge was of opinion that the claim for arrears of salary was governed by Article 7 of the Limitation Act, 1963 (corresponding to Article 102 of the Act of 1908). The learned Judge was of opinion that no question of fixation was involved and the salary fell due month by month and the last claim of pension also fell due in January, 1960 and even if residuary Article 113 of the Act of 1963 was applied to a claim for arrears of pension, the suit was barred by limitation because a period of more than 11 years elapsed after the death of Tara Chand. The learned Judge, therefore, did not settle any other issue nor decided any other question and dismissed the suit as barred by limitation.

10. This dismissal of the suit as barred by limitation did not meet with its approval from this Court in Civil First Appeal No. 141/1974, decided on 20.2.1986. The learned Single Judge considered the facts and circumstances of the case and found that prima facie it could not be said at the outset that the suit in toto was barred by time and that the point of limitation could have been decided after recording evidence and after considering as to how much of the claim was within limitation and how much of the claim was barred by limitation. It was found from the letter dated 20.7.1968 that the pension claimed by the deceased was not disputed by the government and what was stated was that the pension would be determined according to the Rules of the Sirohi State because the deceased retired on 31.5.1950. The learned Single Judge was of opinion that when the Government had not denied the claim of the appellant, it could not be said that the whole of the suit was barred by time and it was always essential question of fact as to from which date the period of limitation would commence. It was also observed that it would be an unfair action and morally illegal and unjustifiable to deny arrears of salary to the incumbent if it be due to him. The judgment and decree dated 19.3.1974 were set aside and the case was remanded. However, the learned Single Judge made it clear that it would be open for the defendants to raise the plea of limitation and all other plea which are available to them without prejudice to any observation made in the order.

11. After remand the suit was taken up for trial by the learned Trial Court. On

21.7.1986 the following issues were framed :

1- vk;k oknhx.k LoxhZ; rkjkpan ds dk;e eqdke o okjhlku gS\\

2- vk;k oknh la[;k 2 Qkjrwy vDy gS vkSj ;g vius fgrksa dks ugha le>rk gSa] vr% oknh la[;k 1 mldk jQhd gS ,oa oknh la[;k 1 dk oknh la[;k 2 ds fo:) dksbZ fgr ugha gS \\

3- vk;k oknhx.k la[;k 3] 4 o 6 ls 11 dh vksj ls oknh la[;k 5 tuwj ikoj vkWQ vVksjuh gksYMj gS vkSj bl gSfl;r ls mlus budh vksj ls okn is"k fd;k gS \\

4- vk;k LohxZ; rkjkpan nks"kh dks cEcbZ ljdkj us fnukad 31-5-50 dks lsok ls eqDr dj fn;k \\

5- vk;k eq[; vfH;Urk dk vkns"kh fnukad 20-7-68 xyr Fkk \\

6- vk;k LoxhZ; rkjkpan nks"kh dks cEcbZ jkT; }kjk fnukad 31-5-50 dks lsok eqDr djus ds ckn Hkh jktLFkku jkT; ds ukSdj Fks \\

7- vk;k Jh rkjkpan nks"kh dks fnukad 31-5-55 rd ekuh tk ldrh gS \\

8- vk;k oknhx.k okn in la[;k pkj esa crk;s vuqlkj 1-6-50 ls 31-5-55 rd dh rU[kkg ds :i;s 13125@& izkIr djus ds vf/kdkjh gS \\

9- vk;k oknhx.k okn in la[;k ukS esa crk;s vuqlkj isU"ku ds :i;s 6492?03iSls izkIr djus ds vf/kdkjh gS \\

10- vk;k Jh rkjkpan nks"kh dks dkSafly ds izLrko fnukad 23-1-48 ds vuqlkj fnukad 5-2-36 ls fnukad 23-1-48 rd dh Jh nks"kh dh czsd bu lfoZl dks dUMksu fd;k x;k vkSj fnukad 5-2-36 ls fnukad 23-1-48 rd dh iwjh rU[kkg nsus ds vkns"kh gq, \\

11- vk;k oknhx.k fnukad 5-2-36 ls 23-1-48 rd rU[kkg ds :i;s 16305?35 iSls ikus ds vf/kdkjh gS \\

12- vk;k oknhx.k okn i= la[;k 13 esa crk;s vuqlkj isU"ku Dyse fnukad 1-6-55 ls 17-1-60 rd :i;s 6492?03 iSls o xzsP;wVh dh jde :i;s 7650@& ikus ds vf/kdkjh gS \

13- vk;k oknhx.k okn in la[;k 15 esa crk;s vuqlkj :i;s 43572?38 iSls ikus ds vf/kdkjh gS \\

14- vk;k oknhx.k dk Dyse fjdkxukbZTM fd;k x;k \\

15- vk;k oknhx.k O;kt 6 izfr"kr izfro"khZ ikus ds vf/kdkjh gS \\

16- vk;k oknhx.k dk okn vof/kdky esa gS \\

17- nknjlh A**

12. The plaintiffs sought amendment in the issues with the contention that Issues No. 4, 6 and 7 did not arise in this case because the Rajasthan Government by the order dated 21.5.1968 passed the order for entertaining the

pension case of late Tara Chand. Issue No. 5 was also said to be not arising in the case as it was only a letter of the Accounts Officer. The plaintiffs also claimed that burden of Issues No. 8 and 9 regarding entitlement of the plaintiffs to recover the amount ought to have been placed upon the defendants because the defendants had already prepared the bills. According to the plaintiffs Issue No. 10 also did not arise and Issue No. 11 was also wrongly burdened upon them. Similarly, Issue No. 12 for pension and gratuity amount was also wrongly burdened upon the plaintiffs because this claim was already admitted. According to the plaintiffs Issue No. 13 also did not arise and burden thereof has also wrongly been placed upon the plaintiffs. Issue No. 14 was also wrongly framed because the claim of the plaintiffs was recognised as was evidenced from the certified copies of letters issued by the defendant No. 2. The plaintiffs also claimed that Issue No. 16 of limitation also did not arise because the issue was earlier decided by the court and the said decision had been set aside in appeal and, therefore, by principles of res judicata such issue could not have been framed. This application of the plaintiffs was contested by the defendants and the court found that by the letters under reference there was a correspondence exchanged for taking into consideration the claim made by the plaintiffs but there was no order passed by any competent authority for accepting the claim and there was a specific denial in the written statement and the issues were framed in accordance with and on the basis of the pleadings. The application was accordingly rejected.

13. It appears that another application was filed on 14.10.1986 under Order 11 Rules 12 and 14, CPC for discovery and production of the documents. Its reply was filed on 8.1.1987 and documents were also filed. It appears that on 8.1.1987, admission/denial was carried out and so also the Trial Court proceeded to mark exhibit on the documents which had already been admitted earlier by the counsel for the defendants and so also the documents which were admitted by the plaintiffs. Another application submitted by the plaintiffs for leading secondary evidence was allowed on 5.2.1987.

14. Thereafter the plaintiffs examined two witnesses, namely, PW 1 Kanti Lal, plaintiff No. 1 and PW 2 Babu Lal Ojha who was the Office Superintendent in the Public Works Department at Sirohi. The defendants examined DW 1 Sayar Mal Dugar who was the Executive Engineer, Public Works Department, Sirohi from April, 1970 to August, 1971 and DW2 Champat Mal Mathur who was the Executive Engineer at Sirohi from 23.8.1971 to 8.7.1974. Apart from the plaintiff, the other witnesses have been produced in proof of the documents in question.

15. The learned Additional District Judge, Sirohi, after hearing the parties, proceeded to decide the issues involved in the case by judgment dated 22.12.1987. The findings recorded by the learned Judge and the basis thereof could be summarised thus:

16. Issues No. 1 to 3 related to the status, competence and capacity of the plaintiffs to maintain and prosecute the suit. These issues were not put under

any serious contention by the defendants and therefore, were decided in favour of the plaintiffs.

17. Issue No. 4 was framed on the question as to whether deceased Tara Chand was relieved by the Government of Bombay on 31.5.1950. So far relieving of Tara Chand on 31.5.1950 by the Bombay Government was concerned, this fact was never in dispute, but for the questions involved in the case, the nature of such relieving of Tara Chand was directly in question. From the plaint averments and correspondence on record it is evident that Tara Chand was relieved by the Government of Bombay on 31.5.1950 in pursuance to order No. 3036 dated 26.4.1950. The said order dated 26.4.1950 had a direct bearing and relevance on the questions involved in this case but for the reasons best known to the plaintiffs, despite producing various other relevant and irrelevant documents, this fundamental document was not produced on record. The learned trial Judge in those circumstances held that it was not possible to pronounce conclusively upon the nature of the order and therefore, Issue No. 4 was decided on the inference that Shri Tara Chand was removed by the Bombay State on 31.5.1950 i.e., he was relieved from service.

18. Issue No. 10 related to the basis of the claim for salary of the period 5.2.1936 to 23.1.1948 as this hiatus in his service was asserted to have been condoned by the resolution dated 21.1.1948. With reference to the orders Ex.23 and Ex.A/3 the learned trial Judge found that in pursuance of the resolution dated 21.1.1948 it was ordered that the services of Shri Tara Chand would be deemed to be continued from 5.2.1936 and he would be entitled for the salary for the entire period upto 23.1.1948. This issue was accordingly decided in favour of the plaintiffs.

19. Issue No. 14 was framed on the question as to whether the claim of the plaintiffs was recognised? This act of recognition refers to the defendant State of Rajasthan. The learned Judge referred to the documentary evidence on record and found that the defendant State of Rajasthan accepted as correct, the claim of the plaintiffs in relation to the pension and gratuity and promised in writing to pay the dues of late Shri Tara Chand towards pension and gratuity and therefore, a new contract would be deemed to have come into existence on the principles of Section 25(3) of the Indian Contract Act. Issue No. 14 in relation to the legally admissible pension and gratuity was decided in favour of the plaintiffs. However, in relation to other claims the learned Judge observed that there was no evidence on record by which other claims of the plaintiffs were accepted by the competent authorities of the defendant State nor the plaintiffs could point out any such direct and convincing evidence. Hence Issue No. 14 in relation to other claims was decided against the plaintiffs.

20. Issues Nos. 5, 6, 7 and 8 were taken together for decision by the learned trial Judge. After comprehensively considering the entire record with reference to all the rival contentions, the learned Judge found that under the Sirohi merger agreement the services of late Shri Tara Chand were initially handed over to the

Central Government and thereafter from 25.1.1950 the services were handed over to the Bombay State. Abu area was merged in the State of Rajasthan from 1.11.1956 (under the State Reorganisation Act, 1956) (hereinafter referred to as "the Act of 1956"). It was, therefore, incomprehensible as to how Tara Chand became the employee of the Rajasthan State? The learned Judge found that before 31.5.1950 late Tara Chand had given an option to conditionally remain with the Bombay State and to be absorbed in Rajasthan but by merely extending the option he would not become the employee of the Rajasthan State. The question was as to whether the services of Tara Chand were to be counted with the State of Rajasthan upto 31.5.1955 and he was entitled for salary from 1.6.1950 to 31.5.1955 and the learned Judge was clearly of opinion that there was no liability of the State of Rajasthan as the incumbent was already relieved by the Bombay State on 31.5.1950.

21. The learned Judge further observed that if late Shri Tara Chand or his heirs felt that he had been wrongly removed, then it was required of them to have taken appropriate proceedings particularly for declaration against the Government of Bombay or the Government of India that his relieving on 31.5.1950 by the Bombay State was invalid and therefore, he was entitled for salary from 31.5.1950 to 31.5.1955. The learned Judge referred to the cited decision of the Hon"ble Supreme Court in Maimoona Khatun and Another Vs. State of Uttar Pradesh and Another, and found the position of law to the effect that the plaintiffs cannot claim the amount of salary till the removal order was declared void and observed that on this principle itself late Shri Tara Chand and his heirs ought to have filed firstly a suit for declaration that Tara Chand was unlawfully removed from service on 31.5.1950 and if his relieving was declared void then only it was permissible for Tara Chand or his heirs to claim the salary till 31.5.1955. It was seriously contended on behalf of the plaintiffs that under Article 8 of the Sirohi merger Agreement it was the duty of the Government of India to ensure continuance of services of late Shri Tara Chand on the conditions which ought not to have been less advantageous than those on which he was serving. It was asserted on the basis of the relevant service Rules of the Sirohi State relating to pension, gratuity and retirement that a public servant would not be retired before attaining the age of 60 years or 30 years of continued service. The learned Judge referred to Rule 8, 9 and 19 of the said Rules of Sirohi State and found that ordinarily a public servant was not to be continued in service after 60 years of age and in any case he was not to be continued after attaining 65 years of age. Under Rule 9, a provision was made that an employee would not be retired before attaining the age of 60 years or completing 30 years of continuous service. But the Council was given right to relieve an employee after 15 years of continuous service by a reasoned order. The learned Judge found that late Tara Chand continued in service from 4.7.1918 to 31.5.1950 and the pension and gratuity have been claimed on this basis only. It was therefore, clear that as on 31.5.1950 he had completed more than 31 years of service and, therefore, his relieving on 31.5.1950 by the Bombay State cannot be said to be contrary to the

Rules applicable in the Sirohi State nor this relieving was in any manner disadvantageous than the Rules of Sirohi State. The learned Judge also referred to Rule 19 and found that under the said Rule if a State employee was relieved before completing 30 years of service, then he would be entitled for pension if he was not responsible for such relieving. The learned Judge was therefore, of opinion that even under the said Rule 19 the only entitlement of Tara Chand was of receiving his pension. Issues No. 5, 6, 7 and 8 were therefore, decided against the plaintiffs.

22. Issue No. 10 was framed on the question as to whether the break in service from 5.2.1936 to 23.1.1948 was condoned and that had already been decided in favour of the plaintiffs. Issue No. 11 related to the claim of the plaintiffs for salary payable to late Tara Chand for the said period of 5.2.1936 to 23.1.1948. The learned Judge referred to the documentary evidence on record and found that despite entering into incessant correspondence, late Shri Tara Chand till his last maintained total silence regarding this claim and therefore, it appeared that such claim has unnecessarily been made by the plaintiffs. The learned Judge was also of opinion that even if it be held that this salary was not received by Tara Chand from Sirohi State, then also he had the claim either against Government of India or against the Government of Bombay and if Bombay State had not made the payment then, within limitation, he could have filed a suit against them but it was never shown as to how the defendant State of Rajasthan was liable for this payment? Issue No. 11 was accordingly decided against the plaintiffs.

23. A look at the issues makes it evident that Issue No. 12 incorporates the claim as put in question in Issue No. 9 also. Both these issues were decided together and after making calculation of the pension and gratuity payable, the learned trial Judge held that the pension payable to late Tara Chand for the period 1.6.1950 to 17.1.1960 came to Rs. 7,045.46 and gratuity to Rs. 3,775.80. Therefore, on Issues No. 9 and 12 it was decided that the plaintiffs were entitled to recover the amount of Rs. 10,821.26 from the defendant No. 1 State of Rajasthan.

24. Issue No. 13 was framed on the total claim of the plaintiffs and in view of the decisions on the issues No. 8 and 11 against the plaintiffs and 9 and 12 in favour of the plaintiffs, they were held entitled for Rs. 10,821.26 only.

25. The question of limitation in this case has been a vexed question on which Issue No. 16 was framed. As noticed hereinbefore, the learned Trial Court in the first place framed this as a preliminary issue and held that the suit filed by the plaintiffs was hopelessly barred by limitation. Late Shri Tara Chand had admittedly been relieved as back as on 31.5.1950 and had expired on 17.1.1960. The claim whether of the dues of salary or of pension and gratuity made by way of a suit filed on 21.8.1971 was held to be beyond limitation. However, on appeal, this Court found that the question of limitation in this case was an intricate question dependent upon various facts and factors and was not such that the suit could have been dismissed in toto at its threshold. When a part of

the claim was shown to have been admitted and under consideration of the State Government, out right dismissal of the suit on limitation alone was not approved. The suit was remanded for decision in accordance with law. However, the defendants were left free to agitate the question of limitation.

26. On the question of limitation as involved in Issue No. 16 it was contended on behalf of the plaintiffs that the entire claim of the plaintiff be deemed to be relating to an amount kept in trust with the defendants and by virtue of Section 10 of the Limitation Act, the suit would not be barred by any length of time. Alternatively, it was contended that if Article 7 of the Limitation Act was applicable, then in view of the decision of the Supreme Court in *Memuna Khatoon's* case (*supra*), the suit be held within limitation and that State Government should not attempt to deprive the persons of their money by resorting to the objections of limitation. The learned Judge was of opinion that there was no question of any applicability of Section 10 of the Limitation Act as it was not a suit for return of the amount kept in trust. For the arrears of salary, the suit ought to have been filed within three years as envisaged by Article 7 of the Limitation Act. The learned Judge found that regarding the amount of Rs. 10,821.26 of pension and gratuity, although the suit had earlier become barred by limitation but by the document Ex. 1 and other documents the defendant Government has promised to make payment of the time barred pension amount also and a new contract came into existence by the proposal of the State Government dated 21.5.1968 and the plaintiffs were informed about the same by the letter dated 17.6.1968. Therefore, the suit relating to the amount of pension and gratuity was held to be within limitation and for other claims it was held to be barred by limitation.

27. Issue No. 15 related to the claim of interest. The learned Judge found that the plaintiffs have claimed interest in the plaint at the rate of 6% per annum. The learned Judge found that although the claim of the plaintiffs had gone barred by limitation but the State acting bona fide accepted the claim for pension and gratuity and there was no delay or mala fide on the part of the defendants. After referring to the delay in disposal of the suit for earlier dismissal, then pendency of the first appeal and then remand and trial, the learned Judge observed that within three months if the payment be made to the plaintiffs by the defendant No. 1 then the plaintiffs would be entitled for 6% per annum compound interest and for not making payment within three months, the plaintiffs would be entitled for future simple interest @ 15% per annum.

28. Issue No. 17 of relief was decided in conformity with the findings aforesaid and, therefore, by the decree dated 22.12.1987 the suit was decreed for an amount of Rs. 10,821.26 against the defendant No. 1 State of Rajasthan with the stipulation that if the decretal amount be paid within three months then the plaintiffs would be paid compound interest @ 6% per annum, to be compounded annually, and if not paid within three months then the plaintiffs would be entitled for the future interest @ 15% per annum. The parties were directed to bear their

own costs.

29. The plaintiffs felt aggrieved by the refusal of part of their claim in the judgment and decree dated 22.12.1987 and filed Civil First Appeal No. 31/1988 before this Court. The learned Single Judge decided the appeal by his impugned judgment dated 21.11.1990. After considering the rival contentions, the learned Single Judge framed the following points for determination in the first appeal:

"1. Whether the Trial Court fell in error in holding that Tarachand upon merger of erstwhile Sirohi State did not become an employee of the State of Rajasthan and became an employee of the erstwhile State of Bombay ?

2. If point No. 1 is decided in favour of the appellants, whether the appellants are entitled to claim arrears of salary, pension and gratuity of Tarachand as mentioned in para 6 of this judgment and the learned Trial Court fell in error in rejecting this claim ?

3. Whether the Trial Court fell in error in holding the suit for arrears of salary etc. as time barred ?

4. Whether the appellants were entitled to costs throughout with interest as claimed ?"

30. Evidently, the substance of the matter hinges on the pivotal question No. 1 as framed by the learned Single Judge. The learned Judge firstly dealt with the fact situation of the case and found after considering the evidence on record that late Tara Chand was not given posting nor was absorbed by the State of Rajasthan. Although the merger agreement was entered on 8.11.1948 but the actual merger took place on 25.1.1950. Thereafter, he continued to serve under the State of Bombay. The learned Judge referred to the noting made by late Tara Chand on 7.3.1950 in Ex. A/7 and found that his services were de facto transferred to the then Government of Bombay under which he served till 31.5.1950 when he was finally relieved on attaining the age of 55 years and he had been paid entire arrears of salary as admitted by PW 1 Kanti Lal. The learned Judge referred to the fact that the order by which Tara Chand was relieved of his charge on 31.5.1950 was not placed on record and it was evident that during his life time he never challenged this order of "termination/discharge/retirement" passed by erstwhile State of Bombay. The learned Judge referred to some sporadic efforts made by Tara Chand for getting himself absorbed/appointed in the State of Rajasthan but then by referring to the shifting stand taken by Tara Chand, the learned Judge concluded that he was equivocating on the issue of absorption. Later on he appeared to have made requests for getting himself absorbed in the State of Rajasthan but he continued to serve in the State of Bombay who relieved him. The learned Judge referred to the request made by Tara Chand by the letter Ex.A/8 complaining of unjust discharge and requesting for absorption in Rajasthan and also his letter Ex.A/9 but then found from Ex.A/17 that a firm and final reply was conveyed to him on 17.9.1955 that as he had already been discharged from service by the Bombay Government, he had

no claims on the Rajasthan Government for his past services or for future absorption. The learned Judge concluded thus :

"All this correspondence shows that the efforts of Shri Tarachand to get himself absorbed in the State of Rajasthan did not meet any success and during his life time; his claim to be absorbed in Rajasthan was never admitted, acknowledged or accepted."

31. The learned Judge also referred to the fact that the copy of the order by which Tara Chand was relieved was never filed and also referred to the document Ex.33, a copy of the letter sent by the Bombay Administration to the Collector, Banaskantha, Palanpur bearing the note that he had been retired by the Bombay Government. The learned Judge was of opinion that on his having been retired by the Bombay Government it would be difficult to appreciate the contention that by merger of Sirohi again in Rajasthan by virtue of the Act of 1956, he became an employee of the State of Rajasthan. The learned Judge found that Tara Chand was retired by the State of Bombay after payment of all legitimate dues and salary. He could have, in his life time, challenged the orders issued by the State of Bombay but never did so. In the present proceedings also the erstwhile State of Bombay or its successor State was not a party and no relief was claimed in the suit against the order of retirement and, therefore, the contention that the order of retirement of Bombay Government be treated as illegal, invalid or nonest was not countenanced.

32. Coming to the legal issues raised in the case, the learned Judge noted the contention of the appellant that late Tara Chand became an employee of the former State of United State of Rajasthan by operation of law. Reliance was placed on Article 8 of the Sirohi merger agreement. After referring to the text thereof, the learned Judge found that this Article guaranteed for certain things by the Government of India which was nowhere in picture in the present suit. The merger agreement was between the Government of India and the erstwhile State of Sirohi. The State of Rajasthan was not a party to it and nothing much turns upon it. The learned Judge also referred to the contention based on the notification issued by the Ministry of States of the Central Government whereby the Central Government delegated to the Government of United State of Rajasthan extra provincial jurisdiction for governance of those areas of Sirohi State as had not been merged in the then province of Bombay. The learned Judge referred to the provisions of the Extra Provincial Jurisdiction Act, 1947 and found that there was nothing in the provisions which would show that merely by conferment of jurisdiction for governance of a particular territory the State on which the jurisdiction was so conferred became a successor State of Government of India. The learned Judge distinguished the decisions cited before him and again by reference to the documents Ex. A/17, A/18 and A/13 observed that the State of Rajasthan never admitted the claim of late Tara Chand that he became an employee of the State of Rajasthan. If inspite of such categoric rejection, some bills were prepared or certain representations were forwarded by the

subordinate officials to the Government, such bills or forwarding note could not be construed as admission of liability by or on behalf of the State. The appellant sought to rely upon the provisions of Sections 86, 91, 115(7), 116 and 117 of the Act of 1956. Referring to the text thereof the learned Judge found that by this Act several new States were formed. Section 10 of the Act dealt with formation of new State of Rajasthan and the Abu Road Taluka of Banaskantha district in the existing State of Bombay being made over to the territory of State of Rajasthan on the appointed day i.e., 1st November, 1956. The submission of the appellant to the effect that the existing liabilities of Bombay State fell to the share of new State of Rajasthan was noted and found to be fallacious and untenable for the reason that the services of Shri Dosi were brought to an end by the then State of Bombay much before coming into force of the Act of 1956. The learned Judge found the provisions to be wholly inapplicable so far the present case was concerned. The learned Judge concluded after consideration of the legal position thus:

"In view of the aforesaid legal position I hold that the learned Trial Court did not commit any error in holding that Tarachand upon merger of erstwhile Sirohi State became employee of the erstwhile State of Bombay and did not become an employee of the State of Rajasthan."

33. The learned Judge also referred to the contention on behalf of the appellant that since part of the claim pertaining to pension had been decreed on the basis of admission made by the Government, the entire of the claim ought to have been decreed. The learned Judge found that truly speaking the claim of pension and gratuity was not admissible to the appellants as against the Government of Rajasthan and the claim could have been only against the erstwhile State of Bombay and the cause of action of such arrears of pension and gratuity arose on 31.5.1950 itself when Shri Tara Chand was retired by the Government of Bombay. However, the learned Judge did not enter into the question further because of the State Government admitting this claim, the Trial Court decreeing the same and there being no appeal by the defendant State of Rajasthan. The learned Judge also referred to the contention that the arrears of salary from 5.2.1936 to 23.1.1948 ought to have been decreed for the Executive Engineer having prepared the salary bill and send the same to the Superintending Engineer and found that mere preparation of such salary bill would be not of much avail. Moreover, Kanti Lal had categorically stated before the court that the Bombay Government had paid the entire legitimate salary due upto 31.5.1950 to his father. Thus deciding points Nos. 1 and 2 against the appellant, the learned Single Judge left aside point No. 3 as to whether the Trial Court was in error in holding the suit for arrears of salary as time barred and did not decide the same.

34. Question No. 4 was framed by the learned Single Judge to the effect as to whether the appellants were entitled for the costs throughout with interest as claimed but held such contention of the appellants to be not tenable. However, it appears from the impugned judgment dated 21.11.1990 that the learned Single

Judge has not considered the justification of the decree granted by the Trial Court, saddling the respondent State of Rajasthan with a liability of pendente lite compound interest @ 6% per annum, to be compounded annually and then a default clause in the form of post decree simple interest @ 15% per annum.

35. The learned Judge in conclusion dismissed the appeal with costs. Hence this appeal.

36. We have heard learned Counsel for the parties and have scanned through the entire record. Having given our thoughtful consideration to the claim made by the appellants and having minutely examined the entire material on record, we are clearly of opinion that this appeal arising out of a fundamentally misconceived suit deserves to be dismissed with costs and the stipulation in the decree regarding interest deserves to be modified.

37. We have thoroughly examined the considerations adopted by the learned trial Judge and so also by the learned Single Judge and we are satisfied that the learned trial Judge was perfectly justified in finding that the claim of arrears of salary was neither admissible on facts nor was within limitation. The learned Judge has rightly decided on Issue No. 16 that the claim for arrears of salary was hopelessly barred by limitation in view of the provisions of Article 7 of the Limitation Act and even in respect of other claims of pension and gratuity it was only on account of the promise depicted by the State of Rajasthan that the claim was taken to be within limitation by virtue of Section 25 of the Contract Act. The learned Judge was also justified in finding in Issue No. 14 that the claim of arrears of salary was never recognised by the State of Rajasthan. It has also rightly been observed in Issue No. 4 that although Shri Tara Chand was admittedly relieved on 31.5.1950 in pursuance of the order dated 26.4.1950 but this material document which was fundamental to the entire claim was never produced. The learned Judge has rightly decided Issues No. 5 to 8 against the plaintiffs and rightly found that late Tara Chand never became an employee of the State of Rajasthan and even it could not be said that the relieving by the Bombay Government was any action standing at contradistinction to the Sirohi State Rules because he could have been relieved even under the Sirohi State Rules of service having already completed more than 31 years of continued service. The suit was decreed for Rs. 10,821.26 being the amount of pension and gratuity on the basis of admission by the State of Rajasthan and in our opinion the appellants were not entitled for any decree beyond this amount.

38. A comprehension of the impugned judgment dated 21.11.1990 makes it further clear that the learned Single Judge of this Court has not mechanically endorsed the findings by the learned trial Judge but has independently examined all the contentions and the entire record and has come to moreover emphatic and clear findings on point for determination Nos. 1 and 2 as noticed hereinabove. The learned Single Judge has rightly found that the claim of the appellants was fundamentally laconic for the basic order dated 26.4.1950 by which Tara Chand was relieved on 31.5.1950 having never been filed in this suit

and having not been shown to have ever been challenged by late Shri Tara Chand Dosi. It was absolutely preposterous on the part of the appellants to suggest that the said order be deemed to be invalid and nonest. The learned Single Judge has further rightly found that truly speaking the appellants had no claim against the Government of Rajasthan and if they had any claim, that was against the State of Bombay alone by whom Tara Chand was retired.

39. We may notice one significant fact that on Issue No. 4 although the learned trial Judge hesitated in coming to the conclusion about the nature of the relieving order of Tara Chand by the Bombay Government but the learned Single Judge, after a travel through the entire evidence and particularly with reference to the document Ex.33 concluded that he was "retired" from service by the Bombay Government. We find that although the learned Single Judge left aside the question of limitation and so also the question of awarding of interest but else categorically came to the same conclusion on other aspects as that of the Trial Court. We are clearly of opinion that the concurrent findings recorded by the Trial Court and the first appellate Judge are valid and correct findings, both on facts as well as in law and call for no interference. Further more, we are clearly of opinion that the present suit in its form was fundamentally misconceived. The appellants seem to have taken up a chance litigation and in order to maintain the same, avoided the basic fundamental facts.

40. The litigation had its genesis in vacillating and equivocating stand taken by late Tara Chand Dosi at the time of merger of the Sirohi State with the Dominion of India. The merger agreement was signed on 8.11.1948 but the actual merger took place on the eve of the Republic Day i.e., on 24th/25th January, 1950. At that time Shri Dosi was serving as an Assistant Engineer, Abu Road with the Sirohi State. It is not in dispute that on 25th January, 1950 Sirohi State merged with India and the administration of the entire territories under the Sirohi State except the areas falling in the tehsils of Pindwara, Reodar and Bhanwari was handed over to the then State of Bombay and the aforesaid tehsils of course were handed over to the administration of the then existing United State of Rajasthan.

41. A perusal of the order Ex.A/5 dated 2.3.1950 makes it apparent that the Administrator of Abu and Abu Road areas required all the heads of departments to intimate him the names and designation of the State servants who wished to be absorbed in Rajasthan and Bombay separately. This order was forwarded to 16 heads of departments commencing from the District Magistrate of Abu at S. No. 1, the District Magistrate of Abu Road at S. No. 2 and various other heads of departments like Tehsildars, Medical Officers, Excise Superintendent, Circle Inspector, Head Masters of the middle schools, Head Mistress of the Girls School, the Customs Inspectors and ending with the Station Officer, Police Station, Abu at S. No. 15 and lastly the Assistant Engineer, Abu Road at S. No. 16.

42. The incumbent of this office of Assistant Engineer, Abu Road at S. No. 16 was none other than late Tara Chand Dosi himself who had received this order on

2.3.1950 itself and noted in his own hand that the same was kept pending as there were gazetted holidays. The same Shri Tara Chand Dosi, Assistant Engineer, Public Works Department (Sirohi State), Abu Dn., Abu Road sent a communication in compliance of the aforesaid order dated 2.3.1950 on 7.3.1950 stating in his own hand as evidenced from Ex.A/6 thus :

"To

The Administrator Sahib,

Abu and Abu Road Area,

Abu Road.

Sir,

In compliance with your order No. 824 of 2.3.50 I beg to submit herewith a list of the employees wishing to be absorbed in Bombay Province for your kind perusal in duplicate.

The signatures of the employees stand in the office copy.

Yours faithfully,

Sd/-

T.C. Dosi Assistant Engineer, P.W.D.

(Sirohi State) Abu Dn.

ABU ROAD."

The significant fact is that along with this letter Ex.A/6 Shri Tara Chand himself sent a list of the names of the office staff who wanted to be absorbed in Bombay Province. This list (Ex.A/7) has been prepared of various staff placed at various places like Aerodrome, Guest Houses etc. but at S. No. 1 of this list in Column No. 1 is the name of none other than late Tara Chand Dosi himself with the description of designation in Column No. 2 as Assistant Engineer. Column No. 3 specifically stated "in the Province wants to be absorbed" where it has been categorically stated as "Bombay" and Shri Tara Chand has signed in Column No. 4 where all other employees have either signed or put thumb impressions. Column No. 5 has been left as a remarks column and we find that in respect of other employees no remark whatsoever has been put but Shri Tara Chand Dosi is alleged to have put a remark in his own hand writing but by an ink different than that used in his signatures in Column No. 4. Be that as it may, the remarks put by Shri Tara Chand Dosi read as under, except the last word which is illegible :

"As per circular No. 824 of 2.3.50 I beg to request that I wish to be absorbed in Rajasthan but at present I have been serving Bombay Government so in case I am allowed to enjoy the rank and facilities as are already have such as motor car, driver, servants, & the furnished quarter belonging to the government if

these facilities are not in Bombay per Bombay Govt. rules these may be considered.

Sd/- 7.3.50"

43. The intention of the incumbent as discernible from these remarks put by him in column No. 5 while stating that he wanted to be absorbed in Bombay Province in column No. 3 show that an obscure situation was sought to be created keeping both the options open.

44. The option was sent precisely in response to the communication Ex.A/5 in which the statement was required of all the State servants who wished to be absorbed in Rajasthan and Bombay separately. In this list (Ex.A/7) late Shri Dosi being head of department, his name appeared at Sl. No. 1 and specifically the Bombay Province has been opted where he wanted to be absorbed. Thereafter strange remarks were put showing his wish to be absorbed in Rajasthan but then referred to the perks of motor car, driver, servants and furnished quarter enjoyed by him in Bombay Government and then asked that if they were not available in Bombay as per Bombay Government rules this may be considered.

45. It is clear that the inclination for Rajasthan as shown or suggested in the subsequent correspondence was only a farce. It is borne out from the letter of Shri Dosi Ex.A/8 that after sending this kind of an option, later on he wanted to make the request to absorb him in Rajasthan, perhaps realising that his retirement in Bombay was imminent. He had received notice No. 3061 dated 27.4.1950 from the Executive Engineer, Banaskantha, Palanpur that he was to be relieved from duty with effect from 31.5.1950 and he has alleged to have sent an application dated 29.4.1950 to the Collector, Banaskantha, Palanpur that he might be officially sent to Rajasthan State Services as he was Rajasthani and wished to serve there. Shri Tara Chand has referred to the fact that he was officially put under the Executive Engineer, Banaskantha, Palanpur on 4.5.1950 whereas notice of relieving him had already been served upon him on 27.4.1950 and he would say that "how deep seated prejudice was working in the mind of the officials of Bombay Government regarding the residents of Sirohi State who were pro Rajasthan." Having gone through the entire material on record we are satisfied that this stand and branding the officials of Bombay Government as prejudiced came only when his wish to be absorbed in Bombay was leading to the result of retirement on 31.5.1950.

46. We are clearly of opinion that late Tara Chand remained with Bombay Province on his own volition and once having exercised the option, could not have insisted upon the Rajasthan State to accept his services after he was retired by Bombay Government. He has of course shown to have submitted representations to the Rajasthan Government before his retirement by Bombay State but such representations are of no avail as never any order was passed for taking him in Rajasthan nor he could have asked for absorption in Rajasthan as a matter of right. We are clearly of the view that the repeat representations were

neither of any effect nor of any avail and the Government has rightly ordered (vide Ex. A/17) to the Chief Engineer with reference to the representations of Shri Tara Chand that

"I am directed to say that Shri Tara Chand may kindly be informed that he has already been discharged from service by the Bombay Government and that he has no claims on the Rajasthan Government for his past services or for future absorption."

We are further clearly of view that with the retirement of Shri Tara Chand by Bombay Government being a fait accompli, there was no basis on which he or his successors could have maintained any action against the Government of Rajasthan for the alleged arrears of salary with reference to the Act of 1956.

47. Late Tara Chand if at all had any grievance or had any claim, it was fundamentally required of him to have challenged the order dated 27.4.1950 passed by the Bombay Government relieving/retiring him from services with effect from 31.5.1950. He having suffered the said order could not have asked the Rajasthan Government to treat the order as nonest and to absorb him in their services. The order was suffered by late Shri Tara Chand from the employer chosen by him and the claim lately lodged on the assumption of taking recourse to the provisions of the Act of 1956 cannot be countenanced and has rightly been rejected by the two courts. The order dated 27.4.1950 was of prime cause of action in the present case. The same was never challenged by properly constituted proceedings as the challenge ought to have been made within time and could have been directed only against the Government of Bombay or at the best, the Government of India. In the present suit the said order dated 27.4.1950 could not have been assumed as an order void ab initio. The order was passed by a competent authority exercising its jurisdiction and has not been shown to be unauthorised or without jurisdiction. For assailing legality or validity thereof, the same ought to have been put to challenge in accordance with law. What to say of not having challenged it earlier, no such challenge has been put even in the present suit. On the contrary, the appellants have chosen to without this material document and in our opinion if an adverse inference is required to be drawn, the same would also operate against the appellants only.

48. With the fundamental fact that late Tara Chand upon merger of the Sirohi State did not become an employee of the Rajasthan State having been categorically established and his having become an employee of erstwhile State of Bombay being clear on the face of the record, in our opinion, the claim for arrears of salary was entirely misdirected so far defendant State of Rajasthan is concerned and has rightly been disallowed.

49. Apart from the aforesaid affirmance of the views of the learned Trial Court as affirmed by the learned first appellate Judge, we are further of opinion that the learned first appellate Judge ought to have considered the findings of the learned trial Judge on Issue No. 16 that the claim regarding arrears of salary was clearly

barred by time. By whatever stretch of arguments the claim is sought to be brought within limitation, we are firmly of opinion that for the claim of arrears of salary dating as back as the period of the years 1936 to 1948 and then of the disputed period of 1950 to 1955, could not, by any stretch of imagination be countenanced in a suit filed on 21.8.1971. The only contention raised on the part of the appellants before the Trial Court was that the amount be treated to be an amount having been kept in trust with the State and therefore, no limitation would be applicable by virtue of Section 10 of the Limitation Act. The argument was fallacious and rather preposterous and has rightly been rejected by the learned Judge. The suit was misconceived and was hopelessly barred by limitation. Even regarding the claim of pension and gratuity, the claim was not as such available against the State of Rajasthan but the said State defendant No. 1 having promised to make such payment, a new cause and new limitation was available by virtue of section 25(3) of the Contract Act. It was for this saving grace that the decree for the amount of Rs. 10,821.26 could be maintained. We would answer the point for determination No. 3 as formulated by the learned first appellate Judge specifically in the negative and affirm the finding of the learned Trial Judge on Issue No. 16.

50. The result of the aforesaid is obvious that this special appeal has no merits and deserves to be dismissed.

51. However, we cannot help noticing an obvious error in the decision of the Trial Court where it has proceeded to grant a decree for the sum of Rs. 10,821.26 with annually compounded interest @ 6% p.a. pendente lite and further simple interest @ 15% p.a. The plaintiffs themselves prayed for a decree of simple interest @ 6% per annum only and there appears to be no justification for awarding compound interest pendente lite. Further, the decree of future interest @ 15% per annum is clearly in violation of Section 34 of the Code of Civil Procedure. We are unable to endorse the reasoning that as the life of the suit was elongated, therefore, the appellants be awarded this rate of interest. There is no warrant of such proposition as adopted by the learned trial Judge. The trial of the suit was protracted not for any of the fault of the defendants. The appellants have chosen to multiply and expand their claim not restricting it to pension and gratuity but even of 23 years old arrears of salary apart from such other alleged arrears of salary of the period 1950 to 1955 which had no foundation. Such a claim having been clubbed with the other claims of pension and gratuity the same were rightly contested by the State inter alia on the ground of limitation. This court even while remanding the matter, only observed that the issue of limitation was required to be decided after consideration of basic facts to see as to how much of the claim was within limitation and how much barred. This court still left the defendants free to raise plea of limitation because it was difficult at that stage without evidence to pronounce finally on this question of limitation. The application seeking amendments of the issues filed by the appellants, as noticed above, show it further clearly that although the appellants came out with the baseless claim but then attempted to project as if

the entire burden was of the defendant State to show as to how the claim was not admissible. Taking a comprehensive view of the entire claim from its genesis to its trial, we are firmly of opinion that a decree for interest as awarded is wholly unjustified. It seems that the learned Single Judge has not considered this aspect of the decree at Point No. 4 which has been abruptly decided without looking into the record.

52. It is unfortunate that the defendant State of Rajasthan, for the reasons best known to it and its officers, has chosen to suffer the decree for compound interest and further interest @ 15% per annum and never took care to challenge the same and in the absence of challenge by the defendants to the decree for interest pendente lite, we are not disturbing the same.

53. However, decree for interest at the rate of 15% per annum after three months of the date of the decree of the Trial Court remains wholly without jurisdiction and contrary to Section 34 of the CPC and cannot be maintained. We consider it necessary to modify this part of the rate of interest. The decree is, accordingly, modified with substitution of rate of interest at 6% per annum simple interest instead of 15% per annum.

54. As a result of the aforesaid, the appeal fails and is dismissed with costs. The decree passed by the Trial Court is maintained subject to modification that the appellants would be entitled to post decree interest on the principal sum of Rs. 10,821.26 @ 6% per annum from the date of decree i.e., 22.12.1987 till realisation.