
(1991) 10 PAT CK 0015

In the Patna High Court

Case No : Appeal From Original Decree No. 18/1981 (R)

Lilawati Devi and Others

APPELLANT

Vs

Central Coalfields Ltd.

RESPONDENT

Date of Decision : 09-10-1991

Acts Referred:

Citation : (1991) 10 PAT CK 0015

Final Decision : Partly Allowed

Judgement

S.B. Sinha, J.—This first appeal arises out of a judgment and decree dated June 7, 1979 passed by Sri Philip Topno, Additional Subordinate Judge, Giridih, in Title Suit No. 20/1 of 1976-79 whereby and whereunder the said teamed court dismissed the plaintiff's suit.

2. The aforementioned suit was filed by Krishna Biharilal Jaiswal, predecessor-in-interest of the present appellants and hereinafter referred to as Jaiswal, inter alia, for the following relief:-

(a) That it be adjudicated and declared that the order of defendants dated October 6, 1966 dismissing the plaintiff from service is tainted with malice and is illegal and improper and ultra vires and the plaintiff be declared to be continued in service even after October 6, 1966.

(b) In case the court finds that in spite of the declaration that the order dated October 6, 1966 dismissing the plaintiff from service is illegal, improper and ultra vires, but for legal difficulty the Court cannot pass orders that the plaintiff's service is continuing even after October 6, 1966, inspite of the said wrong order, or that the plaintiff be reinstated, then a decree for damages of Rs. 1,00,000 be passed in favour of the plaintiff against the defendants.

(c) A decree for the costs of the suit be passed in favour of the plaintiff.

(d) Any other relief or reliefs to which the plaintiff be found entitled in law and equity be given to the plaintiff.

3. Jaiswal was employed by N.C.D.C. Ltd., the predecessor-in-interest of the defendant company which owns a colliery commonly known as Kathara Colliery situated within Bermo Police Station in the district of Giridih. Jaiswal was employed as a Mechanic Grade I in the year 1958. He was allotted a quarter bearing No. 112 by the respondent. The respondent allegedly lodged a false case against Sri Sadhu Sharan Jaiswal full brother of Jaiswal in the year 1962 and dismissed him from services. The said criminal case was instituted on an allegation that the aforementioned Sadhu Sharan Jaiswal committed a criminal trespass in the aforementioned quarter No. 112 which was in possession of Jaiswal.

4. In the aforementioned criminal case, as Jaiswal filed a letter of allotment in his favour by the defendant in respect of the said quarter and as he helped his brother in contesting the said case, the officers of Kathara Colliery became enraged as against him. A suit for eviction was brought against the Jaiswal's brother from quarter No. 112 on absolutely false ground as he had been looking after the said suit also, the officers of the Department took into their heads to remove him also from service and began to forge and concoct cases against him in this direction.

5. Allegedly, in the meanwhile, the Jaiswal was allotted a better type of quarter bearing No. 18/1, but he found the same to be in a state of complete disrepair and, thus, having found the same to be not habitable, requested the defendant to get the same thoroughly repaired. As the repairing work was not done for a long time Jaiswal could not shift to his new quarter bearing No. 18/1. However, the defendants directed Jaiswal to the said quarters. The defendants cancelled the order of allotment in respect of the aforementioned quarter No. 18/1 and forced him to formally handover the said quarter on July 20, 1966.

6. A charge-sheet was issued as against the Jaiswal for allegedly occupying quarter No. MQ No. 112 and quarter No. 18/1 and was placed under suspension with effect from August 29, 1966.

7. Despite explanations having been offered by Jaiswal, an order directing realisation of penal rent from him was passed. According to the plaintiff, the Deputy Chief Mining Engineer of the defendant with sinister motive dismissed him from services by his letter dated September 27, 1966 and then went on putting illegal and undue pressure on him to vacate quarter No. MQ 112. It was alleged by the defendant that Jaiswal had illegally handed over quarter No. 111, to his brother Sadhu Sharan Jaiswal which according to him was false.

8. Jaiswal filed a show cause on September 29, 1966, but the defendant without holding an enquiry and without affording any reasonable opportunity of hearing issued an office order dated October 7, 1966 dismissing him from service.

9. According to Jaiswal, no disciplinary proceeding was initiated nor any enquiry was held before passing the order dated October 6, 1966.

10. The defendants in their written statement inter alia contended that the suit was barred under the law of Limitation. According to the defendant Jaiswal was allotted quarter No. MQ No. 111 and not MQ 112 and an order of allotment dated March 25, 1960 was issued in this regard.

11. The defendants alleged that Jaiswal's elder brother was dismissed from service on the charge of theft of coal not on the grounds mentioned therein. The defendant further denied that Sadhu Sharan Jaiswal was acquitted of criminal charge.

It was further stated that the Eviction Suit filed by them against the said Sadhu Sharan Jaiswal being Title Suit No. 241 of 1965 was decreed and the delivery of possession of the quarter in question being MQ No. 112 was obtained by executing the said decree in Execution Case No. 1/75.

It was further alleged that Jaiswal had little faith in his service and had political affiliations with the then ruling party and was always out to establish his leadership of misdirecting the workmen of the defendant. The defendants allegedly did not take any serious note of the aforementioned conduct of the plaintiff but when the plaintiff did not mend his ways, various charges were framed against him from time to time amounted to gross misconduct. The defendants further denied that quarter No. 18/1 which was allotted to Jaiswal was required to be thoroughly repaired. Allegedly only minor repairs were required in relation to the aforementioned quarter and the plaintiff took possession thereof. Thereafter the repair work was done.

12. Alleged, the plaintiff sub-let the said quarter to one Mr. Roy of M/s. Essen R. Co. and, therefore, he was asked to vacate the same. He vacated the said quarter only on July 20, 1965 when penal rent was imposed upon him.

13. It was allegedly that Jaiswal occupied quarter No. MQ 112 in order to frustrate the defendant's suit for eviction against his elder brother. Defendants therefore stated that the charges against the plaintiff were correct. According to the defendants, the plaintiff had been taking advantage of a typographical mistake in a letter wherein instead of quarter No./MQ 111, MQ 112 was typed.

14. It was further alleged that a charge-sheet was issued as against the petitioner on August 2, 1965 and, thereafter, an Enquiry Committee was constituted for various acts of wilful disobedience and indiscipline on the part of Jaiswal. According to the defendant, thus, the order of dismissal passed as against him was perfectly valid.

15. The defendants further contended that the application for amendment filed by the plaintiff for grant of a decree for compensation was barred under the law of limitation.

16. On the aforementioned pleadings of the parties, the learned trial Court framed the following issues:-

- (1) Is there any cause of action for the suit?
- (2) Is the suit maintainable in its present form?
- (3) Has the plaintiff locus standi to file this suit there being other efficacious remedy available to the plaintiff by way of appeal?
- (4) Has this Court jurisdiction to try and hear the suit?
- (5) Is the suit barred by Section 9 of C.P.C.?
- (6) Is the suit barred by general and special law of limitation?
- (7) Is the suit barred by Section 21(b) old and Section 14(b) of the Specific Relief Act, 1963?
- (8) Is the order of dismissal of the plaintiff from the service legal and final?
- (9) Is the plaintiff entitled to damages as claimed?
- (10) To what other relief or reliefs is the plaintiff entitled?

17. The learned trial Court took up issue Nos. 4 and 5 together and held that the Court has jurisdiction to try the suit.

The learned trial Court, thereafter, took up issue No. 3 and held that the plaintiff has not locus standi to file the suit as plaintiff should have taken recourse to the provisions of Industrial Disputes Act.

With regard to issue No. 8 learned trial Court inter alia held:

"Considering the entire facts and circumstances of the suit and documents and oral evidence of both sides, I find and hold that these were various charges of misconduct and indiscipline against the plaintiff but those charges, except the one which has been enquired into have not been legally enquired into. Accordingly, I hold that the order of dismissal dated October 6, 1966 is premature and it may be questioned in the proper court or before the proper authority it cannot be said to be legal and final. This issue is accordingly answered."

18. With regard to issue Nos. 6 and 7, the learned trial court held that as the cause of action for the suit arose on October 6, 1966 and as the plaintiff amended the plaint by filing an application on May 20, 1975, the suit was barred by limitation.

19. The learned trial Court, thus held that issue No. 9 has also to be decided against the plaintiff in view of his findings aforementioned.

20. Before proceeding to discuss the submissions of the learned Counsel appearing for the parties, it may be mentioned that Jaiswal died during pendency of this suit and in his place his heirs and legal representations have been brought on record.

21. In this situation, Mr. Debi Prasad learned Counsel appearing for the plaintiff rightly submitted that he would confine this appeal with regard to the alternative prayer for damages.

22. Mr. Debi Prasad appearing for the appellants raised three contentions in support of this appeal.

23. It was firstly submitted that the learned court below erred in law in holding that a suit for damages will also not be maintainable and Jaiswal ought to have ventilated his grievance under the provisions of the Industrial Disputes Act.

It was next contended that although an application for amendment of the plaint praying for a decree for damages in alternative was filed in 1975 the said application for amendment of the plaint having been allowed, the same would relate back to the date of institution of the suit and in that view of the matter, the suit cannot be held to be barred under the law of limitation.

Learned Counsel next contended that in view of the finding of the learned trial court in paragraph 22 of the judgment, it should have determined the quantum of damages suffered by the 5 appellants while answering issue No. 9.

24. Mr. N.K. Prasad learned Counsel appearing on behalf of the respondents did not dispute the proposition that a suit for damages will be maintainable in a civil court. Learned Counsel, however, submitted that the plaintiff would be entitled to damages only in the event it is found that the services of the plaintiff were terminated in breach of the conditions of the contract of services.

According to the learned Counsel, as the plaintiff has not been able to show that the defendants have caused any breach in the contract of service, the claim of Jaiswal for a decree for damages was not maintainable.

25. Mr. Prasad submitted that the finding of the learned trial court to the effect that the order of dismissal dated October 6, 1966 passed by the defendants/respondents against Jaiswal was premature is not correct. The learned Counsel submitted that from the evidence on records, it would appear that although the Enquiry Officer recommended for charging penal rent from Jaiswal, the said recommendations were not accepted and an order of dismissal was passed by the defendants/respondents in terms of its letter dated October 6, 1966 (Ext. D-equivalent to Ext. 2/6).

26. Learned Counsel further submitted that although the amendment of a plaint when allowed relates back to the date of institution of the suit, but the defendants would contend that the said amendment should not have been allowed as in the year 1975 the claim of the plaintiff became barred by limitation and thus the application for amendment should not have been allowed in view of the decision of the Supreme Court in *L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co.*, and in *Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others*, .

27. In view of the rival contentions of the parties aforementioned, the following questions arise for consideration in this appeal:-

A. Whether the suit of the plaintiff was barred under the provisions of the Industrial Disputes Act?

B. Whether the defendants/respondents terminated the contract of service of Jaiswal in accordance with the Contract of service and/ or the provisions of the certified Standing Orders framed under Industrial Employment Standing Orders Act, 1948 and if so, whether Jaiswal and consequently the appellants became entitled to decree for damages as against the defendants/respondents.

C. Whether the defendants can be permitted to question the order whereby the plaintiff's application for amendment of plaint was allowed on the ground that plea for alternative decree for damages became barred under the law of limitation?

D. Whether the suit was otherwise barred under the law of limitation?

28. Re-Question No. A:

There cannot be any doubt that in terms of Section 9 of the Code of Civil Procedure, the civil courts have jurisdiction to try all suits of civil nature unless the same is barred expressly or by necessary implication under the provisions of any statute.

29. This aspect of the matter has been considered by the Supreme Court in *Jitendra Nath Biswas Vs. M/s. Empire of India and Ceylon Tea Co. and Another*, wherein it was held that suit against dismissal seeking reinstatement and back wages and injunction against implementation of the order of dismissal is not maintainable, as the reliefs are available only under the provisions of the Industrial Disputes Act.

The Supreme Court held:(p.577)

"It is therefore clear that this Act i.e Industrial Disputes Act not only confers the right on a worker for reinstatement and back wages if the order of termination or dismissal is not in accordance with the Standing Orders but also provides a detailed procedure and machinery for getting this relief. Under these circumstances, therefore there is an apparent implied exclusion of the jurisdiction of the Civil Court."

In the *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, the Supreme Court laid down the following principles applicable to the jurisdiction of the Civil Court: (p/446)

"(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in Civil Court.

(2) If the dispute is an industrial dispute arising out of a right or a liability under the general common law and not under the Act, the jurisdiction of the civil court

is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be."

30. From the decisions aforementioned it is absolutely clear that the jurisdiction of the Civil Court is barred only in respect of the remedies which are available under the provisions of the Industrial Disputes Act and for which a complete machinery and procedure has been provided in the said Act.

31. A right to institute suit for damages does not flow from the right of an employee conferred upon him for the first time under the provisions of the Industrial Disputes Act or under the provisions of Industrial Employment Standing Orders Act, 1948.

32. There cannot be any doubt that right to sue for damages for breach of contract is a common law right. A contract of service as also embodying terms and conditions of services is also governed by and under the provisions of Indian Contract Act. Thus in a case where the contract of an employee has illegally been repudiated by an employer the employee has a common law right to maintain a suit for damages, although his right to enforce a contract of personal service may be barred u/s 14(b) of the Specific Relief Act, 1963.

33. The Civil Court's jurisdiction to try a suit to enforce a right of an employee to obtain an order of reinstatement in services emanates from the provision of the Industrial Disputes Act and/or from the provisions of the Industrial Employment Standing Orders Act 1948, but a right to sue for damages stands on a different footing.

34. Such a right, as noticed hereinbefore, being a common law right and not being in relation to enforcement of any right under the Industrial Disputes Act, the remedy lies only in the Civil Court.

In this view of the matter, it has to be held that the learned court below was not correct in holding that the remedy of Jaiswal was to take recourse to the provisions of Industrial Disputes Act only.

35. There cannot, therefore, be any doubt whatsoever that although in view of Section 14(b) of the Specific Relief Act, 1963 a contract of personal service which depends on the volition of the parties would not be enforceable in the Court of law which claim can only be adjudicated before the forums constituted under the Industrial Disputes Act, 1947, a suit for damages for commission of breaches of contract of service on the part of the defendants/respondents would not be

maintainable.

36. Re-Question No. 8.

As noticed hereinbefore, learned Court below held that Jaiswal succeeded in proving that the order of dismissal dated October 6, 1966 (Ext. D: Ext.2/6) was illegal.

There cannot be any doubt that such a finding arrived at by the trial Court can be questioned by the respondents in terms of Order XLI, Rule 33 of the Code of Civil Procedure.

37. In order to decide the aforementioned issue, the following admitted facts may be noticed:-

(1) A chargesheet dated August 2, 1965 (Ext.D/6) was served on Jaiswal to show cause as to why he should not be found guilty as he purported to have committed the following mis-conduct:-

"On July 30, 1965 he along with his brother (not an employee of the Corporation) stopped truck No. BRN 4682 and did not allow it to move. Further jeep of the Colliery Manager was stopped and he misbehaved with the Manager and did not allow the jeep to proceed to the office. The jeep was detained there for about 1 hour. You also threatened the Colliery Manager to submit to your demand of supplying coal first of all to your quarter or you would not allow his jeep to move. When the Manager did not submit to your demand you forcibly obstructed his movement by standing in front of the jeep and in fact you detained the jeep for an hour. This has constituted an act of misconduct on your part and you are thus guilty of misconduct under Sub-clause (c) (i) and (r) of the Clause 18 of Standing Orders."

Jaiswal filed a show cause which is Ext. D/15.

(2) Another chargesheet was submitted by the respondents on February 3, 1966 (Ext. D/19) which related to non-vacation of the quarter despite cancellation of allotment and forcible occupation without paying any rent and sub-letting the quarter to a different company which allegedly constituted misconduct under Clause 18 (a) (b) (c) and Clause 19 of the Standing Orders.

(3) Only in relation to the second charge, an enquiry was held allegedly in the said enquiry, some witnesses were examined on behalf of the defendants but Jaiswal did not examine any witness.

(4) The enquiry report is contained in Ext. C. In that domestic enquiry Jaiswal was allegedly found guilty of misconduct of the charges levelled under the second charge, namely forcible occupation and sub-letting of quarter. The Enquiry Officer recommended that penal rent be recovered from Jaiswal.

38. Mr. Prasad submitted that despite the said recommendations as Jaiswal was served with the order of dismissal dated October 6, 1966 the employer must be

held to have disagreed with the recommendations of the Enquiry Officer and inflicted the punishment of dismissal of service against Sri Jaiswal. This submission on the part of Mr. Prasad is based on surmises and conjectures.

39. No evidence has been brought on records for the purpose of providing that at any point of time, the disciplinary authority, namely Deputy Chief Mining Engineer differed with the recommendations of the Enquiry Officer.

It may further be mentioned that with regard to the incident dated July 30, 1965, which is subject matter of first charge as referred to hereinbefore, the plaintiff filed a show cause which was marked as Exhibit D/15. From a letter dated August 9, 1965 (Ext. D/17), it appears that Deputy Chief Mining Engineer allowed Jaiswal to report to duty. There is nothing to show that Jaiswal was allowed to report for duty subject to an enquiry which was being held as against him.

40. Evidently, therefore, there was no enquiry in relating to the first charge. In relation to the second charge, from Ext. D/2 it appears that up to August 29, 1966, no show cause was filed by Jaiswal and he was suspended. From Ext. D/I, it appears that a show cause was filed by Jaiswal on August 30, 1966 which was found to be vague and evasive and he was asked to arrange to hand over quarter No. MQ 112 to the Administration and to occupy quarter No. MQ 111.

41. Admittedly, in connection with the charges relating to forcible occupation of quarter No. MQ 112 and other charges a departmental proceeding was initiated.

42. As indicated hereinbefore, from Ext. C which is the enquiry report it appears that the committee recommended that penal rent for 1/B type of quarter should be realised from him as per N.C.D.C. Rules since July 31, 1963 till date for occupying quarter No. 1/B-1 in addition to quarter No. MO 112, Thereafter a letter dated 9/11-66 (Ext. D/5) was issued wherein it was stated that although misconduct committed by Jaiswal was very grave and warrants punishment of his dismissal from service but in order to give him a chance to mend himself, the punishment of recovery of penal rent for the aforementioned period, when the quarter had been in this possession was being awarded and accordingly a sum of Rs. 10 per month as directed to be deducted from his salary/wages bills to cover the said penal rent in respect of the said quarter. By reason of the said letter, Jaiswal was further advised to surrender one of the two quarters failing which necessary disciplinary action amounting to dismissal of his service would be taken.

43. The defendants/respondents, who had special knowledge about the said facts did not bring on record any other document to show as to whether the aforementioned letter dated July 9/11 1966 (Ext. D/15) was given effect to or not. It, therefore, appears, that the letter of dismissal dated October 6, 1966 had been issued without any further show cause or any further enquiry. The said letter dated October 6, 1966 does not disclose as to in respect of what charges the same was issued.

44. It may be mentioned that the learned trial Court has also found that the charge of exchanging quarter No. MQ 111 with MQ 112 was also not enquired into in terms of the provisions of the standing orders.

45. Further it appears that the copies of the enquiry proceedings were not supplied to Jaiswal. There is, thus no evidence to show that prior to passing of the impugned order of termination of service dated October 6, 1966 the provisions of standing Order were followed.

46. The respondents have not questioned those findings of the trial Court. It has also not been questioned that in terms of the Certified Standing Orders, the delinquent employee is entitled to a copy of the entire proceeding but despite requests made by Sri Jaiswal, copies of such proceedings were not handed over.

47. In this case, the plaintiff had examined himself. He further brought on records Exts..I, 1/A and 1/B which are certificates issued to him by the workman engaged in repairing quarter No. 1-B/L He further brought on records Exts.2, 2-E which are correspondences entered into by and between him and the dependents.

48. Standing Order No. 17(ii) with amendment and (iv) reads as follows:-

"(ii) No order or punishment under Standing Order No. 17 (i) shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the allegation made against him. A departmental enquiry shall be instituted before dealing with the charges. During the period of enquiry the workman concerned may be suspended. The workman may take the assistance of a co-worker to help him in the enquiry, if he so desires. The records of the departmental enquiry shall be kept in writing. The approval of the owner, agent or other competent authority (above the Manager) specified by the Managing Director for this purpose, from time to time, shall be obtained before imposing the punishment of dismissal. Where after the enquiry, it is proposed to dismiss a workman, a copy of the enquiry proceedings shall be given to him at his request."

(iv) In awarding punishment under the Standing Order, the authority awarding punishment shall take into account the gravity of the misconduct, the previous record, if any, of the workman and any other extenuating or aggravating circumstances that may exist. A copy of the order passed by the authority awarding punishment shall be supplied to the workman concerned,"

There is nothing to show that the aforementioned provisions of the Certified Standing Orders which have the force of law, were complied with.

49. The submission of Mr. N.K. Prasad to the effect that the disciplinary authority appears to have not agreed with the findings of the Enquiry Officer and imposed the punishment of dismissal from service against Jaiswal is based on surmises and conjecture. No document has been brought on record to show that before imposing any order of dismissal, the workman concerned was given a further opportunity of hearing with regard to the quantum of punishment or that the

disciplinary authority differed with the findings of the enquiry officer.

50. As indicated hereinbefore, in fact, from Ext. D/5 it is evident that the recommendations of the enquiry officer were accepted.

51. In this view of the matter, the finding of the learned trial Court to the effect that order of dismissal dated October 6, 1966 (Ext. D) equivalent to Ext. 2/6 was illegal, is correct.

52. It is now well known that the provisions contained in the certified Standing Order have the force of law. The provisions of the Standing Order certified under the Industrial Employment (Standing Orders) Act, 1946 would prevail over the contract of service. Violations of the provisions of the certified Standing Order in the matter of disciplinary action as against a workman would render the order of dismissal passed against him void and of no effect. In this situation, there cannot be any doubt that Jaiswal became entitled to damages for wrongful termination of contract of service.

53. The question which now arises for consideration is as to what should be the quantum of damages?

Jaiswal in his evidences stated that at the time of dismissal he was receiving a salary of Rs. 900 per month. This was disputed by the defendants.

54. D.W. 1 in paragraph 13 of his deposition admitted that Jaiswal has been receiving wages @Rs. 500 to Rs. 600 per month. Admittedly, Jaiswal was dismissed from service by letter dated October 6, 1966. From the record it appears that he died on May 2, 1982.

55. There cannot be any doubt that if his basic wages as admitted by D.W. 1 was Rs. 500 to Rs. 600 per month, he might be drawing a sum of Rs. 900 per month in view of allowances paid to a workman employed in a colliery. However, assuming that he was entitled to a salary of Rs. 500 per month only, still then he would be receiving a sum of Rs. 6,000 per year. Jaiswal admittedly died on May 2, 1982. On the date of his deposition in 1979 he was 47 years old. He was therefore, born in 1932. In view of the age of superannuation which is 58 years, he would have reached the date of superannuation only on 1990. However, as he died on May 2, 1982, the present appellants are only entitled to damages upto the said date. The appellants would, therefore, be entitled to damages for 15 years and six months which comes to Rs. 93,000. As the aforesaid amount is payable in lumpsum in my opinion, a decree for a sum of Rs. 80,000 would meet the ends of justice. On the aforementioned amount, the appellant would also be entitled to interest pendente lite and future @6% per annum.

56. Re. Question Nos. C and D:-

Jaiswal originally filed a suit in the year 1967 being T.S. No. 287 of 1967 in the Court of Munsif at Giridih. The suit was dismissed.

However, the appellate Court in Title Appeal No. 63 of 1971 allowed the said

appeal and granted leave to Jaiswal to make suitable amendments in the plaint.

57. Admittedly thereafter the plaint was permitted to be amended by Jaiswal on his application by Munsif, Giridih by an order dated August 12, 1975. Jaiswal, thereafter, presented the said plaint in the Court of Subordinate Judge, Giridih and also filed an application for leave of the Court to sue in form *apauparis* which was registered as Miscellaneous Case No. 25 of 1975.

The said application of Jaiswal was allowed by an order dated September 10, 1975. As indicated hereinbefore, the plaint was allowed to be amended by an order dated August 12, 1975 which was presented to the Court of Subordinate Judge, Giridih alongwith the application under Order XXXIII, Rule 1 of the CPC on September 10, 1978. The said order granting leave to amendment the plaint was never questioned by the respondents. The said order dated August 12, 1975 was not questioned before any higher court by the respondent. The counsel for the respondents himself submitted that the suit filed by the plaintiff before the Subordinate Judge is a new proceeding and thus the respondents are stopped from challenging the said order before this Court for the first time.

58. It is now well-settled that when an amendment is allowed the same relates back to the date of institution of the suit. Such an amendment can be allowed in exceptional cases even after the same became barred under the law of limitation. Reference in this connection may be made to *Shanti Kumar R. Canji Vs. The Home Insurance Co. of New York*, : in *New India Assurance Company v. Rajendra Nath Banerjee and Anr.*, reported in 75 Calcutta Weekly Notes 468. The decisions of the Supreme Court in *L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co.*, an in *Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others*, upon which reliance has been placed by Shri. N.K. Prasad are also authorities for the proposition that under certain circumstances, leave to amend the plaint can be granted even if the relief prayed for has become barred under the law of limitation.

In this view of the matter, in my opinion the dependents/respondents at this stage cannot be permitted to question the order of amendment passed by the learned Court below nor the said order dated August 12, 1985 can be said to be illegal.

59. Mr. N.K. Prasad learned Counsel appearing for the respondents however, submitted that in this case no relief can be granted to the appellants as the case of action for the relief by way of a decree for damages arose on October 6, 1966 and, thus Jaiswal was bound to file the suit within a period of three years from the said date in view of the provisions contained in Article 113 of the Law of Limitation.

60. In terms of Section 3 of the Limitation Act, 1963, a Court of law cannot pass a decree if the suit is barred by limitation even if the question of limitation has not been raised in the written statement. Jaiswal became entitled to damages only upon a finding that his contract of service was wrongfully terminated, A suit

for damages on the ground of wrongful termination of contract must be brought within a period of three years.

61. However in this case, as noticed hereinafter, a suit was filed in 1967 itself by Jaiswal in the Court of Munsif, Giridih. As indicated hereinbefore, the appellate Court directed the Court below to give an opportunity to Jaiswal to amend the plaint. The application for amendment of plaint was allowed and thereupon the Munsif, Giridih, returned the same to him so that it may be presented before a Court having pecuniary jurisdiction to try a suit in terms of Order VII, Rule 13 of the Code of Civil Procedure. The plaint was returned to Jaiswal on August 12, 1975 and he filed the said suit on September 13, 1975.

62. Mr. N.K. Prasad learned Counsel appearing for the respondents contended that as the suit originally filed by the plaintiff was not maintainable so far as the alternative relief claimed by him is concerned in the Court of Munsif and this is a fresh suit would be deemed to have been filed on September 10, 1975 and as such, the same would be barred under the law of limitation.

63. In my opinion, the contention of the learned Counsel has no substance. In a case of this nature, although the suit will be deemed to have been filed in the Court on the date when the plaint was presented, but it is well known that the plaintiff would be entitled to obtain the benefit of Section 14 of the Limitation Act, 1963.

64. In terms of Order VII, Rule 10 of the Code of Civil Procedure, a plaint can be directed to be returned at any stage of the suit. Such a direction can also be given by the appellate Court.

It is true as contended by Sri. N.K. Prasad that for the purpose of limitation, the Misc. Case No. 25/75 cannot be considered to be continuation of the earlier suit, and thus the date of institution of the suit would be the date in which the plaintiff presented the plaint to the court in which it ought to have been instituted, but, it is well known, that in all such cases the plaintiff can avail himself of the provision of Section 14 of the Limitation Act and claim exclusion of time during which the prior proceeding was prosecuted.

65. It is neither in doubt nor in dispute that the plaintiff originally filed a suit for a declaration that his services had wrongly been terminated. He was, however, rightly advised later on that such a suit may not be held to be maintainable in view of Section 14(b) of the Specific Relief Act and, thus, in the alternative he prayed for a decree for damages which was permitted by the appellate Court.

66. u/s 14 of the Limitation Act, 1963 the period which is to be deducted from the date of filing of the plaint to the date on which it was finally returned by the Court for representation. Thus right from 1967 up to August 12, 1975, Jaiswal was entitled to get the benefit of Section 14 of the Limitation Act.

67. Even in such a position, failure on the part of Jaiswal to file an application u/s 14 of the Limitation Act will not be fatal inasmuch as all the aforementioned facts

were known to the defendants/respondents.

68. In *Parameswaran Vs. N. Ramachandran*, , the said High Court has held as follows:-

"The only other question that survives for my consideration is the second contention raised by the respondent's counsel that there is no averment or evidence in this case that the plaintiff was prosecuting his case in good faith with diligence in a wrong Court. I do not think that there is any merit in this contention. In a similar situation, *Velu Pillai J. Raman Kunjukrishnan Vs. Raman Viswanathan and Others*, , observed: The fact that there was absence of necessary averments in the plaint to invoke the provisions contained in Section 14 in a case where the plaint was represented after it was returned by the wrong Court is immaterial. Velu Pillai J. gave his reason, the defendant who contested the earlier proceedings could not be held to be prejudiced by way of allegations as regards this honest prosecution of the prior proceedings. The circumstances under which the plaint was returned are well known to the defendant.

Madhavan Nair, J. in *Bhanu Vikrama Pannicker v. Janaki Amma* 1958 Ker LT 741 observed that though a specific ground of exemption u/s 14, Limitation Act has not been taken in the plaint, Rule 6 of the Order VII C.P.C. is no bar in the circumstances of the case for the application of Section 14 since from the endorsements on the plaint itself the grounds attracting Section 14 are present. Further it has to be noted that the grounds of exemption to be shown in the plaint must necessarily have been existing on its date or in other words must relate to events preceding the suit. The events subsequent to the original presentation of the plaint (though it happened in a wrong court) cannot normally be expected to be stated in the plaint. Such events can be mentioned in a plaint only by an amendment thereof but in most of such cases, the facts are explicit in the endorsements on the plaint itself. I am of the opinion that such endorsements can be relief on for the purpose of satisfying the requirement in the plaint inviting the exclusion of time u/s 14 of the Limitation Act. It has been held so in *Sukhbir Singh v. Piare Lal* AIR 1923 Lah 591 and *Firm Lalchand Nathmal and Others Vs. Firm Balaram Rameshwar and Others*, . I feel that the finding of the Courts below that the suit was barred by limitation is wrong."

69. Jaiswal in his application under Order XXXIII, Rule 1 of the CPC made all the necessary averments including the averments as to how he had been prosecuting the suit bona fide in the Court of Munsif at Giridih. So far as those statements are concerned, the defendants/respondents never controverted the same. As noticed hereinbefore, except taking a vague plea in the written statement that the suit is barred under the general and special law of limitation, it had not been contended by the respondents before the Court below that as no application u/s 14 of the Limitation Act, 1963 had been filed by Jaiswal, the suit had become barred by limitation.

70. Before the trial Court, an issue of limitation was pressed only on the ground

that the trial Court should not have granted leave to amend the plaint after expiry of the period of limitation.

71. It is now well known that the question of limitation is a mixed question of law and fact. Had such an objection been raised by the defendants/respondents at an appropriate stage, Jaiswal could have immediately filed an application u/s 14 of the Limitation Act, 1963. Having not done so and having submitted to the jurisdiction of the learned subordinate Judge, Giridih and fought out the case, the respondents cannot be permitted to turn round and contend before this Court for the first time that an application u/s 14 of the Limitation Act should have been filed by Jaiswal while filing the suit in forma pauperis.

72. For the reasons aforementioned, this appeal is allowed in part and the judgment and decree passed the Court below are set aside. The suit is decreed to the extent of Rs. 80000 (Eighty Thousand only). The appellant shall also be entitled to interest pendente lite and future on the aforementioned amount at the rate of six percent per annum from the date of institution of the suit till payment. In the facts and circumstances of this case, the appellant shall also be entitled to costs of this appeal. Advocate's fee assessable at Rs. 500.