

(1963) 07 OHC CK 0003
In the Orissa High Court
Case No : First Appeal No. 55 of 1961

Shyam Sundar Misra

APPELLANT

Vs

Municipal Chairman

RESPONDENT

Date of Decision : 31-07-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Contract Act, 1872 — Section 2 , 25(3)
Limitation Act, 1908 — Article 102, 3 , 9
Specific Relief Act, 1877 — Section 42

Citation : AIR 1964 Ori 111

Hon'ble Judges : R.L. Narasimham, C.J;R.K. Das, J

Bench : Division Bench

Advocate : N.V. Ramdas, for the Appellant; B.K. Pal, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is a plaintiffs appeal against the judgment of the Subordinate Judge of Berhampur dismissing his suit for arrears of salary against the Pariakimedi municipality on the sole ground that the suit was barred by limitation.

2. The plaintiff was an accountant in the Pariaki-medi Municipality. He was suspended on 5-1-1951 and dismissed from service on 1-4-51. He filed an appeal to Government against that order of dismissal, but that appeal was dismissed on 1-3-56 (see Ext. H). In the meantime sometime in the year 1955 he filed a petition under Article 226 of the Constitution in the High Court (see Ext. 1) O.J.C. 286/55 which was disposed of by a Bench of this Court on 11-7-1957 (reported in Shyam Sundar Misra Vs. The State of Orissa and Another, . The Bench held that the order of dismissal passed by the Municipality was in contravention of the Rules regarding the conditions or service of Municipal servants and hence set it aside. I hereafter there was some correspondence and negotiation Between the appellant plaintiff and the Municipality for payment of

arrear salary and other emoluments due to Sim till the date of his superannuation namely 7-7-54. The Municipality by its letter, Ext. 6 dated 18-6-60 informed the appellant that a net amount of Rs. 2499.37 Np. was payable to him in full satisfaction of all his claims against the Municipality and he was asked to accept the said sum within 10 days from the receipt of notice. Instead of accepting this offer the appellant filed the present suit under appeal on 11-7-60 claiming arrears of salary and other emoluments from the date of his suspension namely 7-1-51 till the date of his superannuation, namely Y-/M, together with interest etc. amounting in all to RS. 6995.50 Np.

3. The Municipality's main defence was one of limitation which was accepted by the lower court.

4. Two points were pressed by Mr. Ramdas on behalf of the appellants :--

i) Limitation would run against the appellant any from the date of the judgment in O. J. C. No. 288/1955, viz. from 11-7-57 setting aside the order of dismissal and as the suit was brought within three years from that date it was within time.

ii) In any case, the offer made by the Municipality in its letter Ext. 6 dated 18-6-60 agreeing to pay Rs. 2499.37 Np. in full satisfaction of the appellant's claim would furnish a fresh starting point for limitation u/s 25(3) of the Contract Act. In my opinion, neither of these contentions would prevail.

5. When the appellant was dismissed by the Municipality on 1-4-51 he accrued to him the right to bring a suit for a declaration that the dismissal was unlawful and for other consequential reliefs such as pay and other emoluments due to him. Hence ordinarily limitation would run from the date of dismissal and it would expire within three years from that date. It is now well settled that in a suit for a declaration that the order of dismissal passed on a public servant is wrongful and for recovery of arrears of salary etc. due to him, the correct Article to be applied is Article 102 of the Limitation Act (see *Punjab Province v. Tara Chand* AIR 1947 FC 23 which has been followed in *Shri Madhav Laxman Vaikunth Vs. The State of Mysore*, .

5a. It is true that if the effect of filing an appeal was to suspend the operation of the order of dismissal either by virtue of any special provision in the Orissa Municipal Act or in consequence of the passing of a stay order by the appellate authority, limitation may be saved until the appeal is disposed of as pointed out in *Sita Ram Goel Vs. The Municipal Board, Kanpur and Others*, . But here our attention has not been drawn to any provision in the Orissa Municipal Act which says that as soon as an appeal is filed by the Municipal servant the order of dismissal is held in abeyance. The plaintiff also did not state that the appellate authority stayed the operation of the order of dismissal. Similarly though the writ application (O. J. C. No. 285 of 1955) (reported in *Syam Sundar Misra Vs. The State of Orissa and Another*, , was admitted in 1955 and disposed of on 15-7-1957, it is not alleged that in consequence of the admission of that writ application the High Court stayed the order of dismissal. Thus, in any case,

neither the pendency of the appeal nor the filing of the writ application under Article 226 would save limitation.

6. Mr. Ramdas, however, contended with considerable ingenuity, that until the High court, in the aforesaid writ application gave a declaration that the dismissal was unlawful, the plaintiff had no right to sue for arrears of salary and other emoluments, and consequently time would run against him only from the date of the order of the High Court, viz., 11-7-57. This argument is not sustainable. Any employee who feels aggrieved by his dismissal from service by his employer has a right to sue not only for a declaration that his dismissal was wrongful, but also for the consequential relief for payment of arrears of wages and other emoluments. He cannot obviously split up the two reliefs and sue for the former relief only, in view of the express prohibition contained in Order 2 Rule 2, C. P. C. and Section 42 of the Specific Relief Act. Limitation for both the reliefs would therefore run from the date on which the right to sue accrued to him. If, however, instead of filing a regular civil suit for these reliefs he seeks for an alternative remedy by a direct application to the High court under Article 225 of the Constitution and does not pray for the consequential relief of arrears of salary, etc. he cannot urge that the right to ask for this latter relief accrued only after the date of the judgment of this Court in that writ application.

7. In AIR 1952 SC 8 which Mr. Ramdas himself (sic) cited there are clear observations in support of this view. In that case the public servant concerned was reduced in rank on 11-8-1948. He continued in service thereafter and eventually retired on superannuation on November 29, 1955. He filed a suit against the Government of Bombay only on 2-8-1954 for a declaration that the order of reduction in rank passed on 11-8-48 was void, inoperative and (sic) *ultra vires* and for recovery of arrears of salary, allowances etc. Their Lordships of the Supreme Court while continuing the lower Court's view that the order of reduction in rank was *ultra vires* and void, nevertheless granted him a decree for arrears of salary only from 2-6-1951 (three years prior to the date of institution of the suit) till the date of his retirement from service. His claim for arrears of salary prior to 2-6-1951 was held to be barred by limitation.

8. Mr. Ramdas, however, sought to distinguish the aforesaid Supreme Court decision by saying that there as the Government servant continued in service (though *ultra vires* reduced in rank) there could be no question of suing for a declaration that his dismissal from service was void, whereas here as the appellant plaintiff was dismissed from service on 1-4-1951 he could not ask for arrears of salary and other emoluments without first establishing that the dismissal was wrongful. In my opinion this distinction on facts does not affect the legal position. The right to sue and the commencement of the running of time for purposes of limitation do not depend on the ultimate decision of the Court as to whether the order of punishment (of either dismissal or reduction in rank) was wrongful or lawful. They depend on the date on which the cause of action arose. Here the right to sue for wrongful dismissal and for recovery of arrears of salary

and other emoluments arose on the date on which the order of dismissal was passed, namely 1-4-51, just as in the other (Supreme Court) case the right to sue for a declaration that the reduction in rank was unlawful and for arrears of salary etc. arose on the date on which the order of reduction in rank was passed, namely 11-8-1948. The fact that in the latter case the officer concerned continued to remain in service after the passing of the order, whereas in the instant case he was deprived of his service, as the result of the order of punishment passed against him has no bearing on the question of the right to sue or of limitation.

9. As regards the offer of the Municipality contained in their letter Ext. 6 dated 18-6-1960 it is obvious that as the offer was made after the expiry of the period of limitation, Section 19 of the Limitation Act has no application. Hence Mr. Ramdas relied on Sub-section (3) or Section 25 of the Contract Act. But that sub-section also will not be of any avail. That sub-section refers to a promise made in writing by a person to pay wholly or in part a debt which would otherwise have been barred by limitation. The definition of the expression "promise" in Section 2(b) of that Act shows that there must not only be a proposal but there must also be an acceptance of the proposal by the other side. Here, though by Ext. 6 the Municipality offered to pay to the plaintiff-appellant the sum of Rs. 2495.37 in full satisfaction of all the claims of the plaintiff, within ten days from the date of receipt of that notice, the plaintiff did not accept this offer, the exact date on which he received the notice is not on record, but as Ext. 6 was filed by the plaintiff himself and he is also a resident of Pariakhimedi it may be reasonably inferred that he received it in a day or two. His conduct in not accepting the offer and, on the contrary, in filing a suit on 5-7-60 would show that he rejected the offer. Hence it ceased to be a "promise" within the meaning of the Contract Act, and Sub-section (3) of Section 25 of that Act will be of no avail--See *Binda v. Dasya* 16 CWN 636 and *Venkatappayya v. Venkatappayya* AIR 1946 Mad 72. I may also refer to *Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union*, where it was held that a conditional offer cannot bind a party unless it is accepted by the other side, because till then it does not become a concluded agreement.

10. For these reasons we are satisfied that the plaintiff's suit was rightly dismissed.

11. The appeal fails and is dismissed, but in the circumstances both parties will bear their own costs.

R.K. Das, J.

12. I agree.