

(1972) 04 SHI CK 0007

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 49 of 1971

State of Himachal Pradesh

APPELLANT

Vs

Sadhu Ram Etc.

RESPONDENT

Date of Decision : 10-04-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1
Constitution of India, 1950 — Article 311, 311(2)
Limitation Act, 1963 — Section 12, 12(2)

Citation : (1972) 1 ILR HP 250

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Advocate : B. Sita Ram, General, for the Appellant; M.G. Chitkara, for the Respondent

Judgement

D.B. Lal, J.—The State of Himachal Pradesh has presented this second appeal against the judgment dated 25th February, 1971 of the District Judge, Simla, whereby agreeing with the findings of the Senior Sub-Judge, he has decreed the suit filed by Sadhu Ram for a declaration that the order of his compulsory retirement from service is void and illegal, and that he should be deemed to have continued in service as Patwari in the Revenue Department. The suit of the Plaintiff was based on the allegations, that he was appointed as Revenue Patwari in the erstwhile State of Patiala 33 years ago and after about 3 years of service, he was confirmed. In the year 1956, merger of Pepsu took place with Punjab, and the services of the Plaintiff were transferred and integrated and he was posted as revenue Patwari, in the Tehsil Kandaghat within the District of Simla. In the year 1960, the Plaintiff was functioning as revenue Patwari in Garkhal Circle, Tehsil Kandaghat. A complaint was made against him that he had accepted a bribe of Rs. 100 from one Daultia whose mutation case was pending and the Patwari was creating difficulties in making the mutation. A trap was laid for the Plaintiff and it was alleged that he was caught red-handed accepting the bribe. However, no case was registered against him under the Prevention of

Corruption Act. A preliminary enquiry was held by the vigilance police and on that basis a charge-sheet was served upon the Plaintiff and the enquiry was entrusted to the Divisional Enquiry Officer, Simla. The report was submitted to the Deputy Commissioner, Simla, who issued a show-cause notice to the Plaintiff as to why he should not be dismissed from service. The Deputy Commissioner by his order dated 8-11-1961 removed the Plaintiff from service. Subsequently the Plaintiff came in appeal before the Commissioner, Ambala Division, and by his order dated 9-10-1963 the Commissioner accepted finding of the Deputy Commissioner, but modified the penalty inasmuch as, that he ordered for the compulsory retirement of the Plaintiff. Thereafter the Plaintiff came in revision before the Financial Commissioner, but could not succeed and the order of compulsory retirement was maintained.

2. According to the Plaintiff, the order of compulsory retirement amounted to a penalty within the meaning of Article 311 of the Constitution. Full opportunity was denied to him, in as much as the copy of the complaint filed against him as well as copies of statements of the witnesses were not supplied to him, and as such he was handicapped from cross-examining the witnesses. It was also asserted that the Deputy Commissioner gave the order of removal because he was influenced by certain instructions issued by the Punjab Government which were to the effect that dishonest Government servants would preferably be removed from service and a lenient view would not be taken in their case. It was further contended that the Deputy Commissioner did not consider properly the report of the enquiry officer and did not even mention in his order that he agreed with the findings of the enquiry officer. The Plaintiff submitted that he was governed by the rules of Patiala State and a tribunal was required to be appointed and only then the enquiry could proceed against him.

3. The suit was originally filed before the learned Senior Sub-Judge and he gave the findings that reasonable opportunity was not given to the Plaintiff and that the Deputy Commissioner had really based his order on certain executive instructions of the Punjab Government which could not be binding upon him. He further held that the Deputy Commissioner did not even mention in his order that he agreed with the findings of the enquiry officer. According to the learned Senior Sub-Judge, "compulsory retirement" was not one of the penalties prescribed under the rules and, therefore, such a penalty could not be awarded. He further held that Pepsu rules applied and a tribunal was required to be appointed. With these findings, he could not but hold that the order of compulsory retirement was illegal and hence unenforceable. He decreed the suit for the declaration claimed and further ordered for the reinstatement of the Plaintiff.

4. The State of Himachal Pradesh came in appeal before the District Judge, Simla, who repealed the finding of the learned Senior Sub-Judge in so far as he had held that the order of the Deputy Commissioner did not say in express terms that he agreed with the findings of the enquiry officer. The learned District Judge found that the report of the enquiry officer was duly considered by the Deputy

Commissioner and it was, in fact, expressed in the order itself that he agreed with the findings of the enquiry officer. Further, the learned District Judge repelled the contention of the Plaintiff that Pepsu rules applied and a tribunal was required to be appointed. According to him, the instructions were directory in nature and the Plaintiff did not inherit any such right along with his service so that he could claim a tribunal for the enquiry that started against him. However, the learned District Judge confirmed the findings of the learned Senior Sub-Judge inasmuch as he held that the Deputy Commissioner followed certain instructions of the Punjab Government which compelled him to order for the removal of the Plaintiff. According to the learned District Judge, these instructions were non-statutory and should not have been considered as valid or enforceable. Besides this, he also held that the order of compulsory retirement amounted to penalty which was not provided in the rules and, therefore, such a penalty could not be awarded against the Plaintiff. The learned District Judge also held that copies of important documents were not supplied to the Plaintiff, and, therefore, adequate opportunity was not granted to him and the order was liable to be quashed. In the result, the learned District Judge dismissed the appeal and affirmed the decree granted by the learned Senior Sub-Judge.

5. While the appeal, came up before the first appellate Judge, a preliminary objection was taken that the same was time-barred. The learned District Judge, however, repelled this contention and held the appeal to be very well within time. The question regarding limitation is once again agitated in this second appeal, and I shall presently deal with it.

6. The State Government having felt aggrieved of the decision of the learned District Judge, has preferred this second appeal.

7. The question regarding limitation is of preliminary importance as much as the learned Counsel for the Respondent has questioned the finding of the learned District Judge who held that the appeal filed before him was not time-barred. The facts which culminated in the plea regarding limitation may now be stated. The learned Senior Sub-Judge pronounced his judgment on 1st November, 1969. The Plaintiff applied for a copy of the judgment on 17th November, 1969 and he obtained the copy on 11th February, 1970. Thereafter on 20th February, 1970, the Defendants applied for a copy of the decree and the said copy was supplied to them on 17th March, 1970. The Plaintiff had given a representation to the Collector, Simla, saying that he should be reinstated and along with the representation he submitted the certified copy of the judgment which he had obtained on 11th February, 1970. The State Government utilised that copy of the judgment and filed it along with the appeal which they preferred before the District Judge. It was contended that the time requisite for obtaining copy of this judgment could not be accounted for u/s 12(2) of the Indian Limitation Act and the sole ground that was taken was that the copy of the judgment was obtained by the Plaintiff and not by the Defendants and the time spent for obtaining such a copy could not be credited in favour of the Defendants who had preferred the

appeal. It is conceded on all hands, that if this period that has been spent for obtaining copy of judgment is computed in favour of the Defendants, their appeal was very well within time before the learned District Judge.

8. Section 12(2) of the Indian Limitation Act is in the following terms:

12(2).--In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

The contention of the learned Counsel for the Respondent has been that the phrase "time requisite for obtaining the copy", presupposes that some effort is made by the Appellant himself to obtain such a copy. To my mind, this would be reading in between the lines which necessarily leads to a situation whereby certain words are introduced in the section which are not to be found there. This would not amount to interpreting a section but would rather amount to legislating the same, which is not the function of the Courts. It has to be understood that under Order 41, Rule 1 of the Code of CPC a copy of the decree alone is primarily required to be filed along with the memorandum of appeal. The judgment can even be dispensed with by an order of the Court. If the time requisite for obtaining the copy of the judgment is excluded u/s 12(2), it is because a certain facility is afforded to the Court for understanding the case at the initial stage of admission of appeal as the judgment alone would disclose the merits of the case set up by respective parties. What is provided for facility of the Court cannot be construed an obligation imposed upon the Appellant so that he alone should obtain such a copy of the judgment which is not even of prime necessity to complete the appeal within the meaning of Order 41, Rule 1 of Code of Civil Procedure. If the Appellant files a copy obtained by somebody else, that should be considered sufficient and whatever time has been spent in obtaining such a copy would be accounted for, for holding the appeal to be within limitation. Therefore, in my opinion, the conduct of the Appellant or his bona fide will not be subject-matter of discussion, although the conduct and bona fide of the person actually obtaining the copy could be gone into to justify the period actually taken for obtaining the copy. The learned Counsel for the Respondent referred to *Pramatha Nath Roy v. The Hon. William Arthur Lee* (A.I.R. 1922, Privy Council 352) which was no doubt a case u/s 12(2), and their Lordships considered the conduct of the Appellant and found it mala fide in as much as he did not take immediate steps for drawing up the order of the Court which was considered as a part of his duty. A certain period was permitted to elapse with apparent inactivity on the part of the Appellant and it was held that time requisite for obtaining the copy would only be the time which is bona fide required and no latitude could be granted if more time is taken due to any misconduct on the part of the Appellant. Therefore, the facts of the case are different, and, with due respects, I may submit that the observations of their Lordships are not relevant for the

purpose of this case.

9. The learned District Judge has quoted in his judgment *Mt. Majidan v. Dalmir Khan* (A.I.R. 1951 P&H 388); *Purshattam Narayan Vs. Sugan Chand Pannalal and Others*, and *Union of India (UOI) Vs. Ibrahim Gulaba Tobacco Merchant and Others*, . It has been held in these cases that only those copies which are actually filed with the appeal are to be taken into account for the purpose of Section 12, and it is immaterial as to who obtained those copies.

10. I would, therefore, consider that the copy of judgment filed with the appeal, although obtained by the Plaintiff, could be availed of and the period spent in obtaining such copy could be computed for purpose of limitation. The appeal filed before the learned District Judge was, therefore, well within time.

11. It has been strenuously urged by the learned Advocate-General that proper issues were not framed in the case inasmuch as three omnibus issues were set out which left the parties in vague and hesitating situation and they could neither contend nor controvert specific facts which related to any of such issues. The learned Senior Sub-Judge framed the following three issues:

(1) Whether the order dated 8-11-1961 by the D.C. Simla is illegal, void, inoperative as alleged;

(2) whether the order dated 9-10-1963 passed by the Commissioner, Ambala Division is illegal, void and inoperative as alleged;

(3) whether the order dated 17-9-1964 passed by the Financial Commissioner, Chandigarh is illegal, void and inoperative as alleged.

12. It is obviously correct that the learned trial Judge did not specify any particulars relating to these orders on the basis of which the Plaintiff considered them illegal, void or inoperative. The question has assumed importance inasmuch as the learned District Judge has pinned down the contention, to the alleged omission committed by the Appellants as, according to him, they did not supply the copy of the complaint and the copies of certain statements of witnesses recorded before the vigilance officer, or the Divisional Enquiry Officer, or both. It is on this basis that the learned District Judge has held that adequate opportunity was not afforded to the Plaintiff and the resultant order of compulsory retirement was illegal and unenforceable.

13. The learned District Judge has held that the Deputy Commissioner had followed certain instructions of the Government which indicated that dishonest Government servants would rather be removed from service and no lenient view should be taken in their case. According to him, such instructions could not be followed by the Deputy Commissioner. It would be wrong to say that the Deputy Commissioner actually based his order of removal on such instructions. There is sufficient evidence to indicate that he did consider the report of the enquiry officer and found the allegations made in such report as correct and binding. Therefore, the decision of the Deputy Commissioner was based on the enquiry

report and not on any such instructions issued by the Government. Therefore, the learned District Judge was not right when he held that the order of the Deputy Commissioner was based on these instructions. Rather the order was based on evidence which was found on the record.

14. It is further held by the learned District Judge that "compulsory retirement" is not a penalty within the meaning of rules applicable to the Respondent. It is no doubt true that "compulsory retirement" is not provided as such in the rules. Nevertheless a person who is compulsorily retired is necessarily removed from service and as such if the order is attended by imputation or stigma which is cast upon him, it would amount to a penalty for giving protection under Article 311 of the Constitution. It is so held in the *State of Uttar Pradesh v. Madan Mohan Nagar* (A.I.R. 1967 S.G. 1260). In the instant case, the order regarding compulsory retirement was passed as a result of enquiry in which the allegation made against the Respondent was that he was found taking bribe and hence was dishonest and could not be retained in service. Therefore, the order was definitely attended by circumstances which had cast aspersion or stigma upon the Respondent and as such the order was a punishment within the meaning of Article 311(2) of the Constitution. A similar view was taken in *Mangal Singh v. Punjab State* (1968 S.L.R. 98). In that case, the order of compulsory retirement condemned the Petitioner in unmistakable terms as unfit for service. It was held that the order visited him with serious penal consequences and hence was punishment within the meaning of Article 311. It is, therefore, abundantly clear that the order in the instant case amounted to punishment and adequate opportunity was required to be afforded to the Respondent under Article 311. In this background, this aspect would assume greater importance that the copy of the complaint or copies of the statements of witnesses were not supplied to the Respondent. That may in return lead to an inference that he could not adequately cross-examine the witnesses. Since there was no specific issue on this point, both the parties were prejudiced. In the plaint, the as certion was made that proper evidence was not supplied to the Plaintiff and the Defendants controverted by saying that such evidence was supplied to him. Since the point was not made clear, specific evidence was not adduced as to what particular documents were asked by the Respondent and not supplied by the Appellant. In his statement before the Court, the Respondent never asserted that the copy of the complaint was not supplied to him. However, he did state about the statements of witnesses who were examined before the enquiry officer. Everything was left in a confused state and nonetheless the finding was given by both the Courts below which, to my mind, could not be sustained.

15. It would be premature for me at this stage to give any finding as to what would be the effect of this omission which might have been committed by the Appellants, in case it is held that they did not supply the necessary documents to the Respondents. I would, therefore, frame the following issue and under Order 41, Rule 25 of the Code of Civil Procedure, would remit such issue to the first appellate Court for taking additional evidence on the same and for recording

finding thereon and reasons therefor:

Issue No. 5.--Whether the Plaintiff was not supplied copies of the complaint and of the statements of witnesses who were produced during the course of enquiry ?
If so, its effect ?

16. The learned first appellate Judge shall accordingly give opportunity to respective parties and record evidence on such issue and shall also give his findings with reasons therefor. He shall do this within three months of the date of this order. After such evidence and findings are received, either party may file their memorandum of objections within a period of one month.