

(1969) 08 RAJ CK 0013
In the Rajasthan High Court
Case No : First Appeal No. 9 of 1960

State of Rajasthan and Another	Vs	APPELLANT
Ratanlal Sogani		RESPONDENT

Date of Decision : 08-08-1969

Acts Referred:

Ajmer Government Court of Wards Regulation, 1888 — Section 10
Constitution of India, 1950 — Article 311
Limitation Act, 1908 — Article 102, 120

Citation : AIR 1971 Raj 142 : (1969) WLN 339

Hon'ble Judges : C.B. Bhargava, J

Bench : Single Bench

Advocate : B.C. Chatterjee, for the Appellant; S.L. Gupta and R.P. Goyal, for the Respondent

Judgement

C.B. Bhargava, J.—This appeal by the State of Rajasthan and the Collector, Ajmer against the judgment and decree of the Senior Civil Judge, Aimer dated 6th October, 1959, arises out of a suit instituted by respondent Ratanlal Sogani for a declaration that the order of termination of his service No. 1544 dated 11-5-1950 (Ex, A-10) is null and void and as such he should be deemed to be in service of the Court of Wards. Further a decree for arrears of salary amounting to Rs. 11323A and Rs. 760/- spent by him in the defence of two criminal cases launched by the Court of Wards against him and a further sum of Rs. 2000/- as damages be passed in his favour.

The respondent alleged that he was a permanent employee of the department of the Court of Wards, Aimer and was placed under suspension on 24th September, 1949 by the Additional Assistant Commissioner and Officer-in-Charge, Court of Wards, Aimer on the pretext of facilitating thorough investigation into the complaints of misconduct against him and that on 8th April, 1950 sanction for the prosecution of the plaintiff for offences under Sections 420, 467 and 471 of the Indian Penal Code was also given by the same officer.

But without holding any departmental enquiry and awaiting the result of the criminal cases, the Additional Assistant Commissioner, mala fide ordered the termination of the respondent's service, on 11th May 1950 vide Order No. 1544 dated 11th May, 1950. It was alleged that the order of termination of the plaintiff's service was a guise for his dismissal on the ground of alleged misconduct and was a fraud perpetrated on the constitutional protection guaranteed to the plaintiff under the provisions of Article 311 of the Constitution of India and the various rules which govern his service conditions, that no opportunity as required by law was afforded to the plaintiff before the said order was passed and the principles of natural justice were not even followed. It was also alleged that in one of the criminal cases the plaintiff was discharged and in the other he was acquitted. The plaintiff, therefore, after giving a notice to the Chief Secretary, Government of Aimer, State of Aimer, the Deputy Commissioner, State of Aimer and the Secretary to the Ministry of Home Affairs, New Delhi, instituted the present suit. It may be stated that the suit was instituted in the beginning against the Union of India, New Delhi. The Deputy Commissioner, State of Aimer, Incharge Court of Wards, State of Ajmer and the Chief Secretary, Government of Aimer, but subsequently after the merger of the State of Aimer, into the State of Rajasthan the latter was impleaded as a party and the suit continued against the State of Rajasthan and the Collector, Aimer.

2. The defendants contested the suit and it was stated that the plaintiff was only a temporary employee of the estates under the superintendence of the Court of Wards and was being paid by the estate to which he was attached, that he was not a civil servant and could not invoke the protection afforded under Article 311 of the Constitution of India. It was stated that the order of suspension against the plaintiff was passed because there were serious allegations of cheating, fraud and drawing of bogus travelling allowance and so the matter was referred to the Anti Corruption Department who after enquiry found a prima facie case for his prosecution for offences under Sections 420, 467 and 471 of the Indian Penal Code and pending enquiry into the allegations of misconduct, order of the plaintiff's suspension was passed. Subsequently owing to the release of the estate of Pisangan from the superintendence of the Court of Wards on 16th May, 1950 to which estate the plaintiff was attached his services were terminated by the department with effect from 16th June, 1950 because a consequent reduction in the establishment had to be made. It was also stated that the plaintiff was not entitled to any decree for the amounts mentioned in the plaint and that his claim for the recovery of the said amounts was barred by limitation under Arts. 14, 22 and 23 of the Limitation Act and also u/s 27 of the Ajmer Government Court of Wards Regulations.

3. On the aforesaid pleadings the learned Senior Civil Judge framed as many as 14 issues and after the parties had led evidence, the learned Senior Civil Judge after hearing them declared that the disputed order No. 1544 dated 11-5-1950 terminating the services of the plaintiff was void and inoperative and that the plaintiff at the time of the filing of the suit i.e., on 7-11-1955 remained an

employee of the former State of Aimer. Further a decree for a sum of Rs. 11323/- in respect of the salary upto the date of the suit was passed in favour of the plaintiff. In respect of the other claims of the plaintiff, the suit was dismissed.

4. It may be mentioned here that the plaintiff was permitted to sue in forma pauperis because it was found that he had not sufficient means to pay the court-fee. The decree, therefore directed that the court-fee shall be the first charge on the subject-matter of the suit. Costs were also allowed to the plaintiff to the extent of his success and, three months' time was allowed to the defendants to pay the decretal amount to the plaintiff.

5. Against this judgment and decree, the State of Rajasthan and the Collector, Ajmer filed the present appeal and also applied for the stay of the execution of the decree and this Court by Its order dated 14th July, 1960, stayed the execution of the decree till the decision of the appeal on the condition that if the appellant is not successful, it will pay future interest to the respondent at 6% p. a. from that date till the decision of the appeal.

6. In this Court learned Additional Government Advocate has raised the following three contentions:

(i) that the respondent was not holding a civil post at the time his services were terminated but was a statutory agent of the ward and so the provisions of Article 311 of the Constitution could not be invoked, and his services were rightly terminated on one month's notice,

(ii) that the claim regarding the arrears of salary is barred by limitation, Article 102 of the Limitation Act being applicable to it,

(iii) in any case no decree for the arrears of dearness allowance should have been passed.

7. In regard to the first contention, the argument is that the Court of Wards, Ajmer was only a statutory body and not a department of the State and as such the plaintiff cannot be said to be holding a civil post under the State. Attention in this connection is invited to the provisions of Sections 4, 10 and 11 of the Ajmer Government Court of Wards Regulation 1888 (Regulation No. 1 of 1888) (hereinafter called the Regulation).

It is also pointed out that the plaintiff was being paid his salary from the income of the estate and not from the funds of the Government. Learned counsel for the respondent however, on the other hand urges that the Court of Wards was only a department of the State and all its employees should be deemed to be holding civil posts under the State. It is pointed out that the Deputy Commissioner was the Court of Wards and that superintendence of the property of any ward could be assumed by the Court of Wards with the previous sanction of the State Government and that all payments by the Court of Wards were subject to the rules made under this Regulation by the State Government vide Section 28 which enabled the State Government to make rules consistent with the Regulation for

the purposes mentioned in fa) to (i) and such rules were to take effect after they had been published in the official gazette.

8. The first point, therefore, which arises for determination is whether the respondent was a statutory agent of the ward or was holding a civil post under file State. For this purpose it is necessary to examine the object behind the Regulation. The Regulation was made in the year 1888. At that time the Land Revenue recovered from the landholders must have been, the major source of the revenue of the State, if the landholder happened to be a minor or a person incapable of managing his estate, the State in order to safeguard the interest of the disqualified landholder as also for the recovery of land revenue enacted the Regulation, one of its object most probably being the recovery of land revenue easily and more certainly.

Before this Regulation was made, provisions relating to the Courts of Wards formed part of Ajmer Land and Revenue Regulation 1877 (Sections 101 to 105). The Regulation defines "Government Ward" as a person of whose property, or of whose person and property, the Court of Wards may for the time being have the superintendence under the Regulation and the "landholder" as istimarardar, bhumia, jagirdar, muafidar, malguzar or assignee or revenue, and includes any person having an interest in an estate subject to the payment of the local rate under the Ajmer Rural Boards Regulation, 1886. (Regulation VI of 1886), vide Section 3 (2) and (3). Section 4 says that "the Deputy Commissioner shall be the Court of Wards." u/s 5 every landholder shall be under the jurisdiction of the Court of Wards. Section 7 enumerates the cases in which the landholder is to be deemed to be disqualified. Section 9 indicates that the Court of Wards could assume the superintendence of the property of any person with the previous sanction of the State Government.

Section 10 empowers the Court of Wards to appoint, suspend and remove a manager of the property of any Government ward under its superintendence subject to the rules made under this Regulation. u/s 17 restrictions have been put on the powers of the Court of Wards in regard to the transfer of the wards' property and borrowings on behalf of the ward. Section 24 deals with the withdrawal of superintendence of Court of Wards. Section 26 speaks of the control of the State Government over the proceedings of the Court of Wards under the Regulation and lastly Section 28 empowers the State Government to make rules consistent with this Regulation, in the matter of appointments or removing guardians and managers and in fixing their remuneration etc.

9. It will appear from the above provisions that it is the landholder upon whose disqualification the Court of Wards had to assume superintendence over his person and property with the previous sanction of the State Government. The State has also retained control over the proceedings of the Court of Wards and all appointments of the Manager etc. were to be made by the Court of Wards in accordance with the rules framed by the Government. In order, therefore, to ensure that on the disqualification of a landholder his property may not be

dissipated and the land revenue of the State may be ensured the Regulation seems to have been enacted. It cannot be said that Court of Wards was a statutory body having its independent existence. The position of the Court of Wards seems to me like that of any other department of the State and in my view a manager appointed by the Court of Wards would be a servant of the State just like other servants holding a civil post in the State.

In AIR 1940 82 (Privy Council) their Lordships were dealing with the provisions of United Provinces Court of Wards Act (4 of 1912) and while examining the scheme of the Court of Wards Act their Lordships observed that:

"The objection of disqualification u/s 8 is no doubt threefold--it will protect persons incapable of managing their own affairs--it will prevent the splitting up or as the Act itself says "the dissipation of the property" and in either event it will enable land revenue to be more easily and more certainly collected."

It was further observed that:

"That the collection of land revenue is an important consideration is apparent both from the objects aimed at and from the fact that by Section 4 of the Act, the Board of Revenue is made the Court of Wards for the United Provinces. Indeed, in earlier schemes in respect of the disqualification of proprietors the necessary provisions were contained in the Land Revenue Acts themselves, and even in the present Act the definition of proprietor is only reached by reference to "Mahal" and its meaning in the Land Revenue Act from time to time in force. Moreover though minors, certain females and lunatics--to take three of the classes mentioned in Section 8 of the Act--may require protection whether their property be in land or personally, it is to be observed that under that section only proprietors, i.e., those beneficially interested in a mahal, are dealt with, and mahal primarily means a local area held under a separate engagement for the payment of land revenue: No doubt when once a proprietor is made a ward, all his property is, u/s 16 (1) of the Act, put under the superintendence of the Court of Wards, but the original assumption of wardship is only possible in the case of proprietors or land-owners paying land revenue."

10. The above observation apply with equal force to the provisions of the Regulation and here also the Deputy Commissioner has been made a Court of Wards and its provisions apply only to disqualified landholders who pay land revenue to the State.

A similar question came up for decision before the Patna High Court in P.N. Sarkar Vs. State of Bihar and Others, There also the contention of the Government Advocate was that the manager of the Court of Wards was more like that of a statutory agent of the ward than of a Government servant. The contention was overruled and the learned Chief Justice observed that:

"It is true that the plaintiff had to perform statutory duties and that he had statutory powers under Sections 40 and 41 of Act IX of 1879. It does not,

however, necessarily follow that the plaintiff was not holding a civil post under the State Government within the meaning of Article 311 of the Constitution. On the contrary the appointment of General Manager is made by the Board of Revenue under Act IX of 1879 with the sanction of the State Government. Section 20 of, Act IX of 1879 states that the Court of Wards may appoint one or more Managers for the property of any ward and one or more guardians for the care of the person of any ward under the charge of the Court of Wards control and remove any Manager or guardian so appointed. Section 5 of the statute states that "the board of Revenue shall be the Court of Wards for the territories to which this Act extends".

"It is manifest that the Board of Revenue is not a statutory body with a distinct legal personality independent of the Government. On the contrary, the Board of Revenue is nothing but a name for a body of civil servants under the State Government."

The learned Chief Justice after examining the history of the Legislature came to the conclusion that :

"The plaintiff was holding a civil post under the State of Bihar within the meaning of Article 311 of the Constitution and that he was entitled to a notice in terms of that Article before the order of dismissal was passed by the Board of Revenue."

The provisions of the Ajmer Regulation are also almost similar to the provisions of the Bengal Act No. IX of 1879. T therefore, agree with the finding of the lower court that the respondent at the time of termination of his service was holding a civil post under the State.

11. It is not necessary to examine in detail the contention which was raised in the Court below that the respondent's services were simply terminated and that he was not dismissed so as to attract the provisions of Article 311 of the Constitution of India because the learned Additional Government Advocate has not seriously pressed this contention in this Court, nor indeed he could have done so because it is obvious that before the order of termination of the respondents services was passed, he was suspended pending enquiry into the allegations of misconduct involving criminal offences like cheating and forgery and that sanction for his prosecution in two cases was also given by the Officer-in-charge of the Court of Wards.

It is further clear that the order of termination of the respondent's service stated that owing to the releasing of the estate of Pisangan from the superintendence of the Court of Wards on 16th May 1950 and consequent reduction in the establishment in this department, his services were terminated. But the learned Senior Civil Judge has rightly pointed out that on the date this order was passed, the respondent was not the manager of the estate of Pisangan but had already been transferred to another estate of Bali which till that date was not released from the superintendence of the Court of Wards. It has also been pointed out by the learned Senior Civil Judge that service of no other person excepting the

respondent was terminated the position which was not challenged on behalf of the appellant. Even the officer who had passed the order of termination of the respondent's service was not examined on behalf of the appellant to show that in the case of the respondent the order was simply of the termination of his service and was not motivated by other considerations of his misconduct.

Having regard to all these circumstances that there were allegations of misconduct against the respondent, that he was suspended pending enquiry into those allegations sanction for his prosecution was also given and that no other person excepting the respondent was retrenched, it is clear that the order terminating the services of the respondent was only a guise for his dismissal. That being so it is quite clear that the procedure laid down under Article 311 should have been followed before the said order was passed. It is not the case of the appellant that the procedure laid down in Article 311 was followed before the order dated 11th May, 1950 (Ex. 10) terminating the service of the respondent was passed. It, therefore, follows that the said order is null and void and inoperative.

12. Once it is found that the order of termination of the respondent's services was null and void then the necessary corollary is that he is entitled to his pay and allowance which he was getting at that time. Although the plaint as well as the decree is silent about the period for which the arrears of salary were claimed or allowed, but it appears that the respondent had claimed arrears of salary at the rate of Rs. 120/- p. m. and dearness allowance at the rate of Rs. 50/- p. m. from 24th September, 1949 i.e. from the date of his suspension to the date of the suit after giving allowance to the amount which he had received as subsistence allowance from 24th September, 1949 to 15th June, 1950.

It is, therefore, clear that the arrears of salary and dearness allowance were claimed for a period of more than three years and the learned Additional Government Advocate has, therefore, contended that a part of the respondent's claim was barred by limitation because Article 102 of the Indian Limitation Act, 1903 prescribes a period of three years for the recovery of wages not otherwise expressly provided for by the schedule and the period of limitation runs from the date when the wages accrued due. In the opinion of the learned Senior Civil Judge the suit for recovery of arrears of salary was governed by the Article 120 of the Limitation Act. Learned counsel for the respondent has conceded that for a suit of this nature the appropriate Article of the Limitation Act is 102 and not 120. In Punjab Province v. Tara Chand AIR 1947 FC 23, it was laid down that:

"The term Vages" in Article 102 includes pay or salary. Therefore, the period of limitation for a suit to recover arrears of pay is governed by Article 102 and not by Arts. 115, 120 or 131."

It was further pointed out that Article 120 is applicable to suits for which no period of limitation is provided elsewhere in the schedule and because for a suit to recover arrears of pay the period of limitation is provided in Article 102, Article

120 is, therefore, not applicable.

13. But the question on which the parties have joined issue is as to when the wages accrued due in the present case. The contention of the learned Additional Government Advocate is that the salary became due at the end of each month while the learned counsel for the respondent says that it could not accrue due as long as the order of the termination of the respondent's services was not set aside. In this connection he has referred to the Fundamental Rule 52, which says that:

"The pay and allowances of a Government servant who is dismissed or removed from service cease from the date of such dismissal or removal."

It is urged that because the pay and allowance of the respondent had ceased from the date his services were terminated they could not have accrued due within the meaning of Article 102 of the Indian Limitation Act till that order was, in force. Reliance is placed on State of Madras Vs. A.V. Anantharaman, where it was held that :

"The right to recover arrears of salary by public servants accrues to him only when the order of dismissal is set aside either in departmental appeal or by a Civil Court. By reason of Rule 52 of Fundamental Rules in case of such an employee the right to salary ceases the moment an order of dismissal or removal is made and it is not open to the employee to recover the salary without having the order of dismissal set aside. Fundamental Rule 52 contemplates no distinction between an irregular and improper order which has been set aside by departmental authorities and one declared to be invalid by a Civil Court.

A suit brought within three years from the date of reinstatement, for the recovery of salary for the period for which the dismissal was in force is within the time prescribed."

Further reliance is placed on a recent Division Bench decision of this Court in State of Rajasthan v. B. P. Walawalkar, Civil Special Appeal No. 6 of 1363, D/-9-5-1969 (Raj), and it is urged that in that case the judgment in State of Madras Vs. A.V. Anantharaman, was impliedly approved and this being the decision of a Division Bench is binding upon this Court. It is therefore, necessary to examine the judgment of the Division Bench of this Court because if it has taken the same view as has been taken in the Madras case, then it will have a binding force on this Court sitting singly. No doubt in that case some observations of the learned Chief Justice in the Madras case were extracted but on the facts the learned Judges held that letter Ex, 4 dated 21-2-1950 will not create any bar in the way of the plaintiff to file a suit for his salary."

Therefore, having regard to the facts of that case the learned Judges were not called upon to decide whether by virtue of Fundamental Rule 52 salary of an employee who had been removed or dismissed from service accrued due only when that order was set aside or continued to accrue due where such order was

null and void from its inception. At this stage I must say that there is divergence of judicial opinion on the above question and some High Courts following the decision of the Federal Court in AIR 1947 FC 23 and the decision of the Supreme Court in *Shri Madhav Laxman Vaikunthe Vs. The State of Mysore*, have reached the conclusion that the order of dismissal being null and void from its inception, the employee's salary accrues due month by month even before such order is set aside or the employee is re-instated

14. Before I proceed to notice the decisions of the other High Courts, it is necessary to refer to the aforesaid two decisions of the Federal Court and the Supreme Court. In the Federal Court case the employee was a Sub-Inspector of Police who was dismissed from service and he claimed a declaration that the order of his dismissal was void and of no effect inasmuch as it was made by an officer subordinate to the authority by which he had been appointed and thus contravened the direction laid down in Section 240 (2), Constitution Act and he also claimed arrears of pay from 20-3-1938 till 2-1-1941 the date on which he was normally due to retire from service.

In the High Court the suit for declaration was decreed but was dismissed for arrears of pay as being not maintainable. On appeal the Lahore High Court reversed the decree of the trial Court on the second point, but held that by virtue of Article 102 Schedule 1, Limitation Act, he was entitled to recover arrears of pay only in respect of such period of his service as fell due within three years immediately preceding the institution of the suit. When the matter came up before the Federal Court in appeal by the Punjab Province, it was observed by Zafrulla Khan, J. that:

"It is necessary to point out that this is not a case for recovery of damages or wrongful dismissal as was sought to be contended at one stage by counsel for the appellant. The order of 19-3-1938 purporting to dismiss the respondent having been made by an authority that had been expressly debarred by Section 240 (2), Constitution Act from making it was utterly void of all effect. It was in the eye of the law no more than a piece of waste-paper. The position is that the respondent was never legally dismissed from service and continued in law to be a Sub-Inspector of Police till the date on which he was under the conditions of his service due to retire. He was thus entitled to draw his salary for the period of his service after 19-3-1938."

The Court further held that: The employee could also recover the amount of his salary by means of a suit. The appeal was dismissed. This decision clearly points out two things; firstly, that the order of dismissal being void was in the eye of law no more than a piece of waste-paper; secondly, that the respondent was never legally dismissed from service and continued in law to be a Sub-Inspector of Police. In the Supreme Court case, a suit was filed against the State of Bombay for a declaration that the order of the Government dated August 11, 1948, was void, inoperative, wrongful, illegal and ultra vires, and for recovery of Rs. 12,866 odd on account of his arrears of salary, allowances etc., with interest

and future interest, by the employee who was illegally reverted and the claim as regards arrears of salary and allowance was also allowed in part by the Supreme Court.

The aforesaid two decisions were distinguished by the Madras High Court in the above noted case and it was observed that in the case of AIR 1947 FC 23 , the applicability of Fundamental Rule 52 was not considered while the Supreme Court case was not one where F. R. 52 presented the accrual of salary. This decision was noticed by the Bombay High Court in V.D. Angal Vs. State of Maharashtra, and the learned Judges of the Bombay High Court disagreed with the view taken by the Madras High Court on the ground that in a suit where the employee seeks a declaration that the order of his dismissal is void in breach of the provisions of Article 311 of the Constitution he is bound to ask for salary during the period between the dismissal and the filing of the suit. If he omits to sue for the salary he would not be entitled to sue for the same under Order 2, Rule 2, Civil P. C.

Secondly Fundamental Rule 52 did not lay down any new principle and the same consequence must follow from the termination of the relationship whether or not such a provision is made. In the opinion of their Lordships Rule 52 or any such rule provides only normal consequences of breaking of relationship of master and servant and nothing more. The assumption that termination of, service is a valid termination is implicit in this rule. It does not give a starting point of limitation. The same question also came up for consideration before the Madhya Pradesh High Court in Union of India (UOI) Vs. P.V. Jagannath Rao, and it was held that:

"An order of dismissal of a civil servant passed in violation of Section 240 of the Government of India Act, 1935 or Article 311 of the Constitution, is inoperative and void from the very beginning and has no legal effect whatsoever. When in a suit such an order is declared to be inoperative and void, the declaration of the Court does not make the order void but merely declares or exposes the already existing infirmity in the order. Such an order of dismissal being ineffective from its inception, the civil servant continues in service in spite of the order and it is not necessary that the order should be cancelled or the civil servant should be reinstated. An order cancelling the dismissal or reinstating the civil servant will be entirely superfluous. If an order of reinstatement, is passed it does not furnish a new cause of action for recovery of salary. The cause of action for the salary accrues every month. Para 2042 of the Railway Establishment Code will have no application to such a case. Therefore a claim to salary for a period prior to three years of the institution of the suit for recovery of arrears will be clearly barred by limitation under Article 102 of the Limitation Act, 1908."

It was further held that:

"Earlier suit for declaration that order for termination of plaintiff's services was invalid and void--claim for arrears of salaries which had accrued due till then not included in that suit--such claim included in subsequent suit is barred under

Order 2, Rule 2."

Their Lordships did not agree with the view taken in the Madras case. In *Union of India v. Ram Nath Chitroy*, AIR 1966 Punj 500, also the learned Judges dissented from the view taken in the Madras case and held that:

"By granting a declaration about the legality or illegality of dismissal, the Court does not create any right in the plaintiff. It merely removes an illegal order from the way of the plaintiff. That would not affect the accrual of cause of action in any manner, and the cause of action would still arise on the day the salary for a particular period becomes due under the terms and conditions of employment.

If the dismissal or removal itself is illegal, logically it must follow that any rule made by Government which prevents accrual of pay and allowances from date of such dismissal or removal would never, in the eyes of law, come into operation. In deciding the legality or illegality of such an order, the Court merely declares whether or not any order deserving the attention of law was passed. Such an order cannot by its very nature, alter the date of accrual of cause of action. The function of Courts is to interpret law and decide disputes about existing legal rights. The conception of a judicial decision as being one declaratory of pre-existing legal rights finds expression in the law reports of many countries."

15. The ratio of these decisions is that by setting aside the order of dismissal which is void from its inception, no new right accrues to the plaintiff. Nor does it affect the accrual of cause of action in any manner. The declaration about the illegality of dismissal; (1) removes an illegal order from the way of the plaintiff; (2) if the order of dismissal is void from its inception then Fundamental Rule 52 would never in the eyes of law come into operation; (3) that the plaintiff is entitled to file a suit for recovery of arrears of salary along with the suit for the declaration that the order of dismissal is illegal and in case he fails to claim the former relief, Order 2, Rule 2 would come into operation and would bar his right to file a second suit for that relief. I am in respectful agreement with the above mentioned reasons and I am also of the view that despite the void order of dismissal the cause of action for salary would arise on the date the salary of a particular period becomes due under the terms and conditions of the employment. In principle a void order of dismissal or removal from service should be treated as nullity as opposed to voidable orders which remain binding until rescinded, quashed or reversed. That being so the plaintiff's claim for arrears of salary could be decreed only for a period of three years and two months and as a result the decree of the trial Court shall have to be modified.

16. As regards the third contention the learned Additional Government Advocate relied upon *The State of Madhya Pradesh Vs. G.C. Mandawar*, where the Court refused to issue a writ of mandamus to compel the payment of dearness allowance. This decision has, however, no application in the present case because here the respondent is claiming the arrears of dearness allowance which he would have got if his services had not been illegally terminated by the order Ex.

A-10. It was observed by the Supreme Court that:

"Rule 44 of the Fundamental Rules confers no right on the Government servants to the grant of dearness allowance; it imposes no duty on the State to grant compassionate allowance at its own discretion. No mandamus can, therefore, issue to compel the exercise of such a power. Nor, indeed, could any other writ or direction be issued in respect of it, as there is no right in the applicant which is capable of being protected or enforced."

It was further pointed out by their Lordships that:

"But we are not concerned in the present proceedings with any debt payable by the Government. The claim is not to recover arrears of dearness allowance which had accrued due under the rules in force relating thereto. The claim now put forward is to compel the Government to grant dearness allowance at a particular rate, and under Rule 44 of the Fundamental Rules, such a claim is a matter of grace and not a matter of right."

So a distinction was pointed out between cases where the claim is for the recovery of arrears of dearness allowance which had accrued due under the rules and where the claim was to compel the Government to grant dearness allowance at a particular rate. This decision instead of supporting the contention of the learned Additional Government Advocate, helps the other side. In *Shri Madhav Laxman Vaikunthe Vs. The State of Mysore*, the claim included the amount due for arrears of dearness allowance and that claim was decreed in that case. This contention has, therefore, no force and the respondent is entitled to claim his salary at the rate of Rs. 120/- p. m. and dearness allowance at the rate of Rs. 50/- p. m. for a period of 38 months prior to the institution of the suit. The rest of the claim which is beyond the period of 38 months is barred by limitation.

17. The result, therefore, is that the appeal is partly allowed and the decree passed by the lower Court is modified to this extent that there shall be a decree for a sum of Rs. 6460/- in favour of the respondent for his claim for arrears of salary and dearness allowance instead of Rs. 11323/-. Further the appellant shall pay interest to the respondent at the rate of 6% p. m. on the aforesaid amount from 14th July, 1960 to this date as per order of this Court dated 14th July, 1960. Because the appeal has partially succeeded, each party shall bear its own costs of this appeal. The respondent shall get costs of the lower Court to the extent his claim has been upheld by this Court.