

(1975) 07 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil First Appeal No. 101 of 1973

State of Rajasthan

APPELLANT

Vs

Jagdish Chandra

RESPONDENT

Date of Decision : 22-07-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1975) RLW 442 : (1975) WLN 284

Hon'ble Judges : V.P. Tyagi, J

Bench : Single Bench

Judgement

V.P. Tyagi, J.—The first appeal is filed by the State and is directed against the judgment and decree of the Additional District Judge, Ajmer dated 6th January, 1973.

2. The suit in which the impugned judgment was passed by the learned Additional District Judge is an off-shoot of the previous litigation between the plaintiff and the State Government regarding the order of termination of the plaintiff's service. In that suit the learned Munsif, Ajmer declared by his judgment dated 23rd September, 1970 that the order of termination of the plaintiff's service dated 4th March, 1966 was illegal and therefore the plaintiff was entitled to draw the salary of his post from 1st January, 1968 on ward In consequence of that decree the plaintiff filed a suit for Rs. 10,314/- on 10th July, 1971 for the recovery of the arrears of his salary and other emoluments from 1st January. 1968 to 30th June, 1971. The suit was contested by the State but the learned Judge decreed the suit for Rs. 8597.62 which included the salary of the plaintiff from 1st January, 1968 to 10th May, 1968.

3. This Court has today decided the S.B Civil Second Appeal No. 216 of 1973 which arises out of the suit No. 75 of 1970 filed in the Court of Munsif, Ajmer District, Ajmer. In that suit the validity of the order of termination of plaintiff's service was questioned on various grounds. The judgment of the two courts below was that the termination of the plaintiff's service was illegal and therefore,

the plaintiff was entitled to get his salary from the defendants. Those judgments have been upheld by this Court to lay. The judgment has a direct bearing on the present claim made by the plaintiff for the arrears of his pay which he is entitled to recover from the State as per the decision of this Court in S.B. Civil Second Appeal No. 216 of 1973.

4. Learned Counsel appearing on behalf of the State however urged that the claim of the arrears of salary pertaining to a period commencing from 1st January, 1968 to 10th May, 1968 is time barred. The present suit was filed on 10th July, 1971. The period to which arrears of salary are claimed includes within it the period commencing from 1st January 1968 to 10th May, 1968 i. e. a period of 5 months 10 days. The plaintiff is however entitled to deduct the period of two months covered by the period of the statutory notice given to the Government u/s 80. Thus the claim for salary for the period of 5 months 10 days commencing from 1st January, 1968 ending with the 10th May, 1968 is beyond the period of limitation. Learned Counsel appearing on behalf of the plaintiff urged that the cause of action to file the present suit arose to him after the judgment was pronounced by the learned Munsiff in suit No. 75 of 1970 on 23rd September, 1970 and, therefore, the claim for the arrears of salary for the aforesaid period commencing from 1st January, 1968 to 10th May, 1968 is within time.

5. I regret I cannot accept this plea of learned Counsel for the respondent. The cause of action for the realisation of the salary arises when the salary becomes due. In this case the plaintiff could claim his salary for the period commencing from 1st January, 1968 to 10th May, 1968 arose when the said salary became due. It cannot be accepted that the salary became due on account of the declaration given by the learned Munsiff in the aforesaid suit. Salary in my opinion became due soon after the month for which salary is claimed was completed. In this view of the matter the claim for arrears of salary from 1st January, 1968 to 10th May, 1968 is obviously time barred. The decree, therefore, shall be reduced by Rs. 906.30

6. The appeal of the State is partly allowed. The decree is reduced by Rs. 906.30. Parties should proportionately get their costs from each other.