
(1985) 03 RAJ CK 0013
In the Rajasthan High Court
Case No : Civil First Appeal No. 18 of 1974

State of Rajasthan

APPELLANT

Vs

Radha Mohan

RESPONDENT

Date of Decision : 27-03-1985

Acts Referred:

Citation : (1985) RLW 301 : (1985) 1 WLN 183

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

G.M. Lodha, J.—The State of Rajasthan has filed this appeal against the judgment and decree dated 21-9-73 of Additional District Judge No. 2, Jodhpur in Civil Original Suit No. 9 of 1972.

2. The plaintiff joined as Medical Officer in the Medical Department of the erstwhile State of Jodhpur. On 7-4-49 Jodhpur State merged in the State of Rajasthan. The plaintiff continued to serve the Medical and Health Department upto 1st March, 1972.

3. On integration the services of the Medical Officer were classified into C.A.S. Class I and CAS Class II. The plaintiff was ultimately selected to the post of C.A.S. Class I on 17-4-59 after his selection by the Public Service Commission. He was appointed C.A.S Class I vide Government Order No. 2754 effecting from 1-4-50, but the emoluments of O.A.S. Class I were not given to him.

4. In the civil suit filed by the plaintiff the State contested the claim on merits. It was pointed out that he became CA.S. Class I on 27-4-54 and not earlier.

5. The learned trial Judge after recording the evidence came to the conclusion that the plaintiff should have been awarded all emoluments of G.A.S. Class I from 1-4-50.

6. the State has filed this appeal.

7. The only point argued and pressed by Mr. G.M. Bhandari on behalf of the State is that the suit was filed in 1972 and the limitation is three years. It was argued that the suit could not have been filed for more than 3 years. Mr. R.R. Chacha appearing for the plaintiff raised a preliminary objection on the ground of maintainability of this appeal. According to him in the trial court no plea of limitation was raised and no issue was framed. Consequently, the parties never led evidence. It was pointed out that the question of limitation is dependent upon mixed question of fact and law and, therefore, it should not be allowed to be taken now in the appeal without there being a foundation in the pleadings and issue on that point.

8. Having heard learned Counsel for the parties, I am of the opinion that the objection of Mr. R.R. Chacha should succeed. By and large, the question of limitation is a mixed question of law and fact though in a given case it may be assumed even to be purely a question of law only. The situation would be different if it becomes a question of law and is allowed to be raised in appellate court in interest of justice. However, normally, the question of limitation should also be raised in the pleadings like other question and objections, so that the other party gets full opportunity of showing that the suit was not time barred. To illustrate, if the objection would have been taken, the plaintiff might have in a given case produced documents to show that the Government acknowledged the liability from time to time and assured that the same would be paid and thus even if it was prima facie time barred the period was extended. There can be such other situation where a plaintiff in a given case can meet out the objection of limitation on permissible ground. I am therefore, inclined to accept the contention of Mr. R.R. Chacha that the plaintiff cannot be allowed to be taken by surprise without there being any pleading on issue.

9. The present one is a case where admittedly the State itself has passed an order of fixation of the plaintiff in C.A.S. Class I and as per the finding of the trial court which is not under challenge now, fixation has taken effect, without initially joining in 1950, when there was merger of Jodhpur State in the State of Rajasthan. This would add a new dimension to the case of the plaintiff respondent who is a civil servant of the appellant. It is not surprising and shocking that the State should try to deny justice to its own civil servants who are part and parcel of the State and on whose bed rock and foundation the entire State runs. This is denial of the proclamation and flagrante disregard as also clear violation to the Preamble of the Constitution which assures social justice to all. It was in such a situation that Hon''ble Justice Bhagwati sitting with A.D.Koshal. J.in Madras Port Trust v. Hymanshu International (1919)(1) SLR 757 thought it proper to express the Apex Court's disfavour and condemnation of the State authorities taking up the plea of limitation which is most immoral and unjust for defeating a just claim of a citizen.

It was observed as under:

The plea of limitation based on this Section is one which the court always looks

upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such plea to defeat a just claim of the citizen, it is high time that Government and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a Government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well founded, it has to be upheld by the Court, but what we feel is that such a plea should not ordinarily be taken up by a Government or a public authority, unless of course the claim is not well founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable.

The present case depicts a worst situation where the State is taking such a plea which has been taken to be immoral and unjust by the Apex Court against the just claim of a citizen who happens to be a civil servant and part and parcel of the State. In my opinion, the fact that such a plea was not taken in the trial court only shows that the Law Officers were discreet enough to avoid such dishonest pleas against just claim and the fact that in appeal without foundation such a argument is made only exposes that the State has chosen to take this plea in spite of condemnation by the apex Court in desperate bid to get the just claim of a civil servant defeated. The least that can be said in such a situation is that it hardly behaves a social welfare State committed to social justice.

10. Even otherwise there is no justification for this plea and I would not allow the permission to raise this point now in appeal without being proper basis and foundation in the pleadings in the trial court.

11. For all the above reasons, the objection of the appellant regarding limitation cannot be entertained, for adjudication and is rejected.

12. No other point was argued and pressed before this Court.

13. Consequently, the appeal fails and is hereby dismissed with costs.