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**(1972) 04 RAJ CK 0027**  
**In the Rajasthan High Court**  
**Case No : Civil Second Appeal No. 511/60**

State of Rajasthan

APPELLANT

Vs

Shri Sunder Das

RESPONDENT

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**Date of Decision :** 13-04-1972

**Acts Referred:**

Constitution of India, 1950 — Article 226, 309, 311  
Government of India Act, 1935 — Section 240

**Citation :** (1972) RLW 365 : (1972) WLN 427

**Hon'ble Judges :** J.P. Jain, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

J.P. Jain, J.—This is a second appeal by the defendant State against whom the respondent's suit No. 37/61 for the recovery of Rs. 2016.24 as arrears of salary for the period from 1.6.52 to 18.3.54 was decreed by the Civil Judge. Ajmer and the same was maintained in appeal by the District Judge, Ajmer on 31.3.1965.

2. Respondent Sunder Das was joined service in the Agriculture Dept. of the erstwhile State of Ajmer on 10.5.1948. His appointment was temporary. His services were terminated after one month's notice to him with effect from the afternoon of 30.4.1952. The order terminating his service is Ex. A-3 on record. Sunderdas appeared to have represented the matter and he was re-employed on the same post with effect from 19.5.1954. This order has not been placed on record by either party. In the meanwhile, State of Ajmer merged into Rajasthan. By the order dated 24th February, (sic) the Government of Rajasthan in the Agriculture Department passed an order condoning the break of service of the respondent Sunderdas from 11st May, 1952 to 18th May, 1954, for the purpose of quasi permanency, seniority and fixation of pay. According to this order, he was declared quasi permanent with effect from 1st July, 1954. He was also permitted to count the period of break for the purpose of increment. A copy of this order is on record and marked Ex A-4 It was delivered to Shri Sundar Das on

10.4 1960. On the basis of this order, the respondent instituted the suit in the court of Civil Judge, Ajmer, that he was entitled to all the natural and consequential relief flowing from the Government" order Ex-A-4 and claimed a money decree of Rs. 2016.94 with interest at the rate of 6% per annum for the period during which, according to him, he was prevented from attending his duties. In short, his claim was for the arrears of pay from 1.5.52 to 18.5.54 This suit was filed by him on 3rd July, 1961.

3. The District Agriculture Officer, officer incharge of the case, held written statement on behalf of the State of Rajasthan No dispute was raised with regard to the plaintiff's original appointment, the termination of his service and reappointment, on 19.5 1954. The order dated 24 2.1960 was also not disputed. It was however, alleged that the plaintiff's suit claiming arrears of pay for the period from 1st May, 1952 to 18th May, 1954 was barred by time. Another contention raised on behalf of the State was that the order dated 24 2 60 (Ex A-4) condoning the break of service was for a limited purpose and if did not purport to entitle the plaintiff to the arrears of pay for the period he was out of employment from the date of termination of his service to the date of his reappointment.

4. The learned Civil Judge settled the necessary issues and after having recorded evidence adduced by the parties decreed the plaintiff's suit and granted him a decree for Rs. 2016 94 with costs and future interest at 6% per annum from 4 4 1961 (the date of notice) till the satisfaction of the decree. On appeal by the defendant State, the learned District Judge, Ajmer, maintained the decree. Both the courts held the suit of the plaintiff to be within time. It is this judgment and decree that has been assailed before me in this second appeal

5. Mr. Shrimal on behalf of the appellant has made two contentions before me. (i) That the second appointment of the plaintiff on 19-5-1954 was a re-employment and not a reinstatement. The break in service was not condoned for the purpose of entitling the plaintiff to draw salary for the period he did not work as an employee of the State (ii) That the plaintiff's suit for recovery of arrears of salary for the period in question is governed by Article 102 of the Limitation Act and cause of action arises on a date when the salary of a particular month becomes due and as such, the suit is not within time. According to him, the order dated 24-2-60 does not give the plaintiff a cause of action for the present case. On the other hand, Shri J.P. Joshi on behalf of the respondent art enucusly urged that the break in the plaintiff's service was condoned by the Government order dated 24-6-60 for all purposes and according to this order, the termination of the service was unlawful. There fore, the plaintiff was entitled to recover the arrear of salary only on the basis of the order Ex. A-4. His answer to the second contention also flows from this argument According to him, if the termination of the plaintiff's service was unlawful and after it was so declared, he was entitled to recover his salary on the basis of such order. He has placed reliance on Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh, On the basis of

this argument he submits that the plaintiff's suit is within limitation.

6. I have considered the rival contentions of learned Counsel for the parties. I have also gone through the judgments of the two courts below carefully. I will presently deal with the contentions one by one.

7. There is no dispute that the plaintiff was working as a temporary employee in the Agriculture Department of the erstwhile State of Ajmer and his services could be terminated with one month's notice. It is admitted that one month's notice was given to him and his service were terminated with effect from 30th April, 1952. It has not been brought on record that any appeal was filed against this order and the said order was set aside. The admitted position between the parties is that the plaintiff was re-employed on 10-5 54. The order not being on record, I am unable to say as to under what circumstances that appointment was made. It necessarily follows that the order dated 19 5-45 reappointing the plaintiff was not in continuation of his earlier service which was terminated on 30th April, 1952. Here it may also be noticed that the order of termination was not challenged in any other manner. Now, I come to the order passed by the Government Rajasthan on 24-2-1960. In this order it is mentioned, "He (plaintiff) was retrenched by the Ajmer Government on 30th April, 1952. Later on, it was, however, found that his retrenchment was caused through an administrative error and he was re-employed by that Government on 19th May, 1954. It was represented by Shri Ainani that he should be deemed to have been re-instated and not re-employed from 19th May, 1954 and should get all the benefits attendant on reinstatement, including drawl of increments and arrears of pay for the period of his break in service from 1st May, 1952 to 18th May, 1954. This statement of fact goes to show that the plaintiff must have represented before the Government and claimed his reinstatement and all the other benefits in consequence of the reinstatement. In the next paragraph, the order that was actually passed runs to this effect:

In view of the manifest hardship involved the Governor is pleased to condone the break in service of Shri Sundardas T. Ainani from 1st May, 1952 to 18th May, 1954 for purposes of quasi-permanency, seniority and fixation of pay. This means that his seniority as Compost Mistry will be post dated to 29th May, 1951, and he may be declared quasi permanent with effect from 1st July 1954, after fulfilling the necessary formalities, under Rule 3 of Central Civil Services, (Temporary Government Servants) Rules. He is also permitted to count the period from the date of drawl of the last increment prior to 30-4-1952 towards increment on reappointment on 19-5 1954.

The order, as reproduced above, makes it abundantly clear that the plaintiff's request that he should be deemed to have been reinstated was not accepted. His claim for the arrears of pay for the period from 1st May, 1952 to 18th May, 1954 was also not conceded. The order purports to condone the break in service only for purposes of quasi permanency, seniority and fixation of pay. I am unable to read in this order that the break in service was condoned for any purpose other

than those referred to above. I rather find that he was treated to be a re-employee. This order did not as well set aside the order of termination.

8. I may here refer to two relevant rules as they existed at the relevant time from the Rajasthan Service Rules, 1951:

54 (I) When a Government Servant who has been dismissed, removed, compulsory retired as a penalty or suspended is reinstated the competent to order reinstatement shall consider and make a specific order:

(a) regarding the pay and allowances to be paid to the Government Servant for the period of his absence from duty, and

(b) whether or not the said period shall be treated as a period spent on duty.

This rule was subsequently substituted vide F.D. Notification No. F. 1(33) F.D. (A) Rule 62 dated 6-8-1963, but at the moment I am not concerned with the amended rule. Another rule that needs mention is 212. Prior to 26-11-62, the rule existed in the following manner:

212. Upon such conditions as it may think fit in each case to impose the authority competent to fill the appointment held by a Government Servant at the time of condonation is applied for, where he to vacate that appointment may condone all interruptions in his service.

The present rule reads as follows:

212 Upon such conditions as it may think fit in each case to impose the Government may condone interruption in service of a Government Servant.

9. The plaintiff was not dismissed, removed or compulsory retired as a penalty, nor was he suspended on that account. Rule 54 will not, therefore, be attracted. Even in a case where a Government Servant has been dismissed, removed or compulsorily retired as a penalty and he is subsequently reinstated, the authority competent to order the reinstatement is supposed to make a specific order regarding the pay and allowances to be paid to him for the period of his absence from duty. In the present case, the Government or the authority competent could not have acted under Rule 54. Rule 212, however, empowered the competent authority to condone any interruption in service on such conditions as it may think fit to impose. Under the present rule, this power is with the State Government and it can condone interruption in service of a Government Servant upon such conditions as it may think fit in each case to impose. At best the plaintiff could bring his case under this rule, and the authority competent to fill the appointment of the post which the plaintiff held could condone the interruption in his service. I have already held above from the order dated 24-2-1960 (EXA4) that the interruption in the case of the plaintiff was not condoned for all purposes and the break in service was condoned only for the limited purpose mentioned in that order. On this ground the plaintiff cannot claim to have been entitled to the arrears of salary for the period from 1-5-1952 to 18-5-

54.

10. That learned trial Judge while discussing issue No. 1 held that the plaintiff was illegally removed from service with effect from 30-4-52. He placed reliance on a report dated 20th June, 1952 (Ex. A. 5) made by the Agricultural Officer to the Finance Secretary, Ajmer, in which it was stated that the plaintiff was not fit for outdoor duties as he applied for his transfer from Gagwana to Ajmer twice or thrice and his work had also been reported poor by the Sub-divisional officer, Ajmer. It may be mentioned here that this report is of a date after his services were terminated. This report was perhaps obtained to dispose of the plaintiff's representation. Another document relied upon by him is Ex. A-10. This is dated 21st April, 1952 by the Agricultural Officer, State of Ajmer to the Finance Secretary, Government of Ajmer, In this report reasons have been mentioned for having terminated the services of Shri Sundardas. The learned Judge was of the opinion that the plaintiff's termination of service actually amounted to removal from service and it was done without giving him a reasonable opportunity and thus there was a breach of Article 311 of the Constitution He accordingly decided Issue No. 1 in favour of the plaintiff. I may at once observe that this finding of the trial court is erroneous. The order terminating the service of the plaintiff did not cast any stigma on him and it cannot be said to be by way of penalty. In *Ram Gopal Chaturvedi Vs. State of Madhya Pradesh*, their Lordships of the Supreme Court ruled that where on the face of the order it did not cast stigma on the character or the integrity of the official concerned, it cannot be taken to be by way of punishment and the provisions of Article 311 of the Constitution cannot be attracted. In the Supreme Court case, the High Court had found that a temporary civil servant was not a fit person to be retained in service and on the recommendation of the High Court, the Government terminated the services of a temporary Civil Judge after giving him notice. It was held that Article 311 was not applicable. In an earlier case *I.N. Saksena Vs. State of Madhya Pradesh*, Wanchoo J. (as he then was) who spoke for the court held that the absence of express words casting stigma on the Government servant cannot be construed to one of removal within the meaning of Article 311 of the Constitution.

11. Yet in another case *Biney Kumar Mukherjee v. State of Bihar and Ors.* 1971 (SC) 462 their Lordships held that the order by which the services of the appellant were terminated, was an order of termination simpliciter and did not contain any reflection on the conduct or work of the appellant. The mere fact that, subsequently, the Govt. gave information on an inquiry as to the background reason which led the Government to terminate the services cannot convert that order into an order of dismissal so as to attract the provisions of Article 311 of the Constitution.

12. On the basis of these authorities, there is hardly any scope left for me to accept the finding of the learned trial judge holding that the order of termination was unlawful and in breach of Article 311 of the Constitution. The lower appellate court did not discuss the point I am, therefore, clear in my mind that the order

terminating the service of the plaintiff was a simpliciter termination of service and did not amount to removal. That order became final and it was never set aside either by an Appellate Authority or by a court of Law. It may also be noticed here that the plaintiff did not also choose to challenge and seek a declaration that this order of termination was illegal and void. The plaintiff's services thus having been terminated from 1.5 1952, he was out of employment and was not entitled to any salary till he was reappointed by a fresh order dated 19.5 54.

13. This appeal could be disposed of on this point alone, but as the learned Counsel for the parties have argued the question of limitation as well, I would like to discuss that point. At the outset, I will deal with the case of Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh. On the basis of this decision, it was argued on behalf of the respondent plaintiff that the order terminating his service having been held unwarranted and erroneous by the government vide its order dated 24.2.60 (Ex. A-4), he became entitled to the arrears of salary during which he had to remain absent from duty for no fault of his. I must state at once that the facts in the Supreme Court case were distinguishable. In that case Devendra Pratap Narain, who was working as a Tehsildar on probation, was suspended on 21.4 52 on certain charges of misdemeanour. He was ultimately dismissed from service by an order dated 16.3.53. He sued the State Government on 24.11.1954 and was successful in obtaining a declaration in appeal from the High Court that the order of dismissal dated 16.9.53 was illegal and void and that he must be deemed to continue in service. As a result of this decree, he was reinstated to his post & he took over on 28.4.1959. On 11.17.59 a fresh enquiry was started against him by the Board of Revenue and he was suspended. As regards his pay, the Board of Revenue passed the following order:

(1) The pay from April 21, 1952 till the date of orders of his dismissal will be limited to the subsistence allowance of Rs.-76/11/- p.m. already drawn by him.

(2) The pay for the period from the date following the date of the order of his dismissal till the date of his taking over charge of his duties as Tehsildar on reinstatement will be fixed at Re. 1/- p. m, as token pay.

He was also informed that the period from 21st April, 1952 to the date of his taking over i. e. 28-4-59 on reinstatement will be treated as "on duty" and will count towards person. Against this order Devendra Pratap Narain in moved the High Court at Allahabad by a petition under Article 226 of the Constitution. The High Court held that the second enquiry against him directed by the Board of Revenue was not barred by virtue of the previous decision of the Civil Court. It was also held that he could not be deemed to have been confirmed with effect from H)58. The High Court also came to the conclusion that for salary for the period from April 21, 1952 to November 24, 1954 (the date of the suit filed by him) he shall be deemed to have relinquished that part of his claim. Regarding his salary for the period from November 24, 1954 to April (sic) High Court held that

fixation of Re. 1/- as token salary by the Board of Revenue amounted to punishment which the Government could not, impose without following the procedure laid down in Article 311 of the Constitution. The High Court was, however, of the opinion that it could only direct the opposite party to proceed in the matter according to law. On account of the partial failure of the petition, Devendra Pratap Narayan approached the Supreme Court in appeal by a certificate of fitness. The Supreme Court held that State Government was competent to order a fresh enquiry and to suspend the appellant (Devendra Pratap Narayan). As regards his salary for the period after the suit i. e. 24-12-54 to the date he was again suspended, it was urged on behalf of the State of U., that by virtue of Rule (sic) of the Fundamental Rules framed by the State Government under Article 309 of the Constitution, the competent authority of the State had the power to decide as to what proportion of pay and allowances shall be given to the employee in such cases. Their Lordships after referring Rule 54 of the Fundamental Rules (which is exactly the same as the existing Rule 54 of the Rajasthan Service Rules) observed as follows:

This rule has no application to cases like the present in which the dismissal of a public servant is declared invalid by civil court and he is reinstated. This rule, undoubtedly enables the State Government to fix the pay of a public servant whose dismissal is set aside in a departmental appeal. But in this case the order of dismissal was declared invalid in a civil suit. The effect of the decree of the civil suit was that the appellant was never to be deemed to have been lawfully dismissed from service and the order of reinstatement was superfluous. The effect of the adjudication of the civil courts is to declare that the appellant had been wrongfully prevented from attending to his duties as a public servant. It would not in such a contingency be open to the authority to deprive the public servant of the remuneration which he would have earned had he been permitted to work.

Accordingly, the decision of the High Court on this point was confirmed. Obviously these observations have no application to the facts of the case before me. Sundardas never challenged the order of termination in a civil court. He did not obtain any declaration that order was illegal or null and void and that he continued to be in service. As indicated above, that order of termination was also not set aside in a departmental appeal. On this premise I held above that Rule 54 of the Rajasthan Service Rules extracted above did not apply. That apart, the question of limitation was not involved in the Supreme Court case and the claim for the salary in that case only flowed from the decree of the civil court.

14. The plaintiff in the present case sued the State Government clearly on the basis of the order dated 24-2-60 (Ex A-4) for the arrears of salary. According to him, that gave rise to a cause of action to him for his claim. There is no controversy between the parties that Article 102 applied to a case where arrears of salary are claimed. The courts below as well held that this article governed the present case. The controversy, however, is as to when the cause of action arises

and the period of limitation commences in suit of this nature. According to the third column of Article 102 the period of limitation commences when the "wages accrued due" and the period of limitation is prescribed as three years. Their Lordships of the Supreme Court in *Smt. Hemlata Kantilal Shah Vs. State of Maharashtra* and another, quoted with approval a decision of the Federal Court in *Punjab Province v. Tarachand* AIR 1947 FC 23 in which it was held that the term "wages" included the word "Salary" and a suit for arrears of salary of a Government Servant is governed by Article 103 of the Indian Limitation Act, 1908.

15. The lower appellate court placed reliance on *State of Madras Vs. A.V. Anantharaman*, and following the observations set out below held that the plaintiff's suit was within time:

(7) In a later case before the Supreme Court reported in *Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh*, the claim by a public servant whose dismissal had subsequently been set aside by a decree of Court was allowed without any question being raised as to its being barred by Article 102. We are therefore of opinion that in the case of dismissal of a public servant which has been subsequently set aside as in the present case, the right to recover arrears of salary would accrue only when that order of dismissal has been set aside either in departmental appeal or by a Civil Court. Viewed in that light, the instant claims must be held to be in time. The appeal therefore fails.

Suffice it to say that the present case is not a case of dismissal and the observations extracted above do not advance the plaintiff's case. At any rate, the Madras decision was dissented by a decision of this Court in *State of Rajasthan and Another Vs. Ratanlal Sogani, Bhargava J.* who decided the case held that cause of action in a suit for arrears of the salary arises at a date when salary of a particular period becomes due under the terms of employment and not when the order of dismissal is set aside. After having discussed the various authorities, the learned Judge observed as follows:

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 32 would never in the eye 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, R, 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.

To the same effect is the decision of the Supreme Court of India in *Jai Chand Sawhney v. Union of India* 1970 (II) CJ 288. In that case Jaichand Sawhney was removed from service, He sued the Union of India in the court of the Subordinate Judge, Hissar for setting aside the order of removal on the ground- (i) that the order was made by an authority subordinate to the appointing authority, and (ii) that he was not given an opportunity to show cause against the action proposed to be taken in regard to him as required by section 240 of the Government of India Act, 1935. He also claimed a decree for Rs. 20 399-9-0, being the amount of arrears of salary. The appeal in the High Court of Punjab was dismissed. By the decree the plaintiff was awarded arrears of salary only for three years prior to the date of the suit. In Special Appeal their Lordships upheld the decree and observed as follows:

Counsel for the plaintiff contended that the period of three years under Article 102 commences to run from the date on which the order of dismissal is set aside, either by a departmental authority or by the civil court in a suit or other proceeding. Counsel also contended that the cause of action in a suit by a dismissed employee arises on the date of the institution of the suit, if the Court sets aside the order of dismissal or removal. In support of his contention, Counsel relied upon a judgment of the Madras High Court in *State of Madras v. A.V. Anantharaman* ILR 1963 Mad 1014. In that case the Madras High Court observed that the pay and allowances of a public servant dismissed or removed from service cease from the date of such dismissal or removal and his right to recover the arrears arises because of Fundamental R. 52 not before the date on which the result of the subsequent proceeding setting aside the dismissal or removal is declared. Counsel for the plaintiff says that the terms of Fundamental Rule 52 are the same as the terms of Rule 2042 of the Railway Establishment Code, and according to the principle of the judgment of the Madras High Court the plaintiff's right to sue must be deemed to have accrued on the date on which the suit was instituted. In our judgment, the contention cannot be accepted. When the order of dismissal or removal is set aside by the Court on the ground of failure to afford the constitutional protection, the order is declared invalid (*SIC*)initio, i. e. as if it in law never existed, and the public servant concerned was unlawfully prevented from rendering service. If that be the correct view, salary due to the public servant concerned must be deemed to have accrued month after month because he had been wrongfully prevented from rendering service. The period of limitation under Article 102 commences to run when the wages "accrued due", and wages accrue due when in law the servant becomes entitled to wages. Rule 2042 of the Railway Establishment Code, merely provides that "the pay and allowances of a railway servant who is removed or dismissed from service cease from the date of the order of removal or dismissal". That rule

does not operate to make the wages accrue due on the date of the institution of the suit. If the order of dismissal is set aside the public servant is deemed to be in service throughout the period during which the order of dismissal remained operative and his right to sue for salary arises at the end of every month in which he was unlawfully prevented from earning the salary, which he could, but for the illegal order of dismissal, have earned.

The High Court was, in our judgment, right in holding that the that the plaintiff's claim was governed by Article 102 of the Limitation Act, that the remuneration payable to him accrued due month after month, and that the plaintiff's claim for salary beyond the period provided by the third column of Article 102 was barred by the law of limitation.

This authoritative pronouncement leaves no room for doubt that the cause of action accrued to the plaintiff month after month for the period he claimed the arrears of salary. The claim relates to the period from 1-5-1952 to 16-5-1954. The suit was instituted on 3-4-1961. The suit is clearly time barred.

16. For the reasons discussed above, the plaintiff cannot succeed and the decree passed by the two courts below has to be set aside.

17. In the result, the appeal is allowed, judgments and decrees passed by the court below are set and the plaintiff's suit is dismissed. Having regard to the circumstances of the case, the parties will bear their own costs throughout.

18. Learned Counsel for the respondent prays for leave to appeal to Division Bench. The case has been decided on the Supreme Court decision referred to hereinbefore. In my opinion, this is not a fit case for leave to appeal. The prayer is rejected.