
(1977) 08 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 671 of 1973

The State of Punjab

APPELLANT

Vs

Sari Madho Ram Gupta

RESPONDENT

Date of Decision : 23-08-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1977) 08 P&H CK 0033

Hon'ble Judges : Harbans Lal, J

Bench : Single Bench

Advocate : H.S. Gujral with Mr. T.S. Gujral, for the Appellant; G.R. Majithia, M.S. Jain, M.L. Sharma and Mr. Sudhir K. Sardana, for the Respondent

Final Decision : Dismissed

Judgement

Harbans Lal, J.—This regular first appeal by the State of Punjab is directed against the judgment and decree of the Subordinate Judge 1st Class, Chandigarh, dated June 15, 1973, by which the suit of plaintiff-respondent was decreed against the appellant for an amount of Rs. 34,633.47.

2. The plaintiff-respondent (hereinafter to be called the respondent) after having been recruited as an Overseer in the Public Works Department (Buildings and Roads Branch) in the State of Punjab was confirmed as such on October 13, 1951. He was promoted as Sub-Divisional Officer on 7th July, 1961 and was reverted to his substantive post of Overseer on 19th June 1962. This order of reversion was challenged by him through a writ petition (C. W. No. 294 of 1965) which was allowed on May 26, 1967 and the order of his reversion was quashed, vide copy Exhibit P. 1. Before the decision of this writ petition the respondent was served with a notice dated March 3, 1966 by the Chief Engineer, P. W. D. (B & R Branch) retiring him as Overseer on attaining the age of 55 years with effect from June 26, 1966. Consequently he was relieved of his duties on July 9, 1966. This notice of pre-mature retirement was challenged by filing a writ petition (C. W. No. 1634 of 1966) on July 28, 1966, which was dismissed by this Court on

January 22, 1968, vide copy Exhibit P. 3. The present suit was filed on October, 4, 1969 in which the said order of retirement was challenged as illegal and without jurisdiction, and a declaration was sought to the effect that the petitioner continued working as Sub-Divisional Officer till June 26, 1969. He also claimed a money decree for Rs. 38,000/- with costs and interest on the ground that arrears of pay as Sub-Divisional Officer for some period and as Overseer for some other period as well as on account of Travelling Allowance, house rent, gratuity and several unauthorised deductions, as detailed in paras 8 and 9 of the plaint, were due to him. In the written statement filed on behalf of the State, all the averments in the plaint were controverted, and a number of preliminary objections were raised. Inter alia it was pleaded that the suit was barred by limitation and that the notice of premature retirement had been challenged in a previous writ petition which had been dismissed, and therefore, the decision in the said writ petition (copy Exhibit P. 3) operated as res-judicata.

3. On the pleadings of the parties the following six issues were framed by the trial Court as preliminary:--

1. Whether the suit is barred because a notice u/s 80, Civil Procedure Code, is not alleged to have been given to the defendant ?
2. Whether the suit is bad for misjoinder of causes of action or of parties ?
3. Whether the suit or any part of it is barred by time prima facie ?
4. Whether the plaint has been stamped with court-fee of proper value ?
5. Whether the State of Haryana is a necessary party ?
6. Whether the decision of Hon"ble High Court dated 22nd January, 1968 operates as res-judicata ?

Except issue No. 3 relating to limitation, all the issues were decided by the learned trial Sub-judge by his order, dated 13th March, 1972 in favour of the respondent. Issue No. 3 regarding (limitation was left undecided and was reframed. The following issues, including the one on limitation, were thereafter framed and decided by the learned Sub-Judge by the impugned judgment: --

7. Whether the suit is within time ?
8. To how much amount is the plaintiff entitled ?
9. Whether the cuts mentioned in para 9 of the plaint are illegal ?
10. Whether the order of retirement dated 3rd March, 1966, is invalid.
11. Relief.

Regarding Issue No. 6 it was held that at the time the second writ petition was filed challenging the notice of pre-mature retirement, the other writ petition in which the order of revision of the respondent had been challenged had not been

decided. Therefore, challenge to the notice of pre-mature retirement on the ground that notice had been issued by the Chief Engineer, who was not the appointing authority of the respondent as Sub-Divisional Officer could not be taken in the second writ petition and as such the decision of the High Court dismissing the writ petition and holding the notice of pre-mature retirement as valid could not operate as res-judicata as the principle of constructive res-judicata was not applicable when both the proceedings were not suits. However, it was held that ground No. (iii) in para 7 of the plaint regarding challenge to the notice that the same was by way of punishment, was barred on the principle of res-judicata. Regarding Issue No. 7, the suit was held to be within time. On issue No. 10 it was held that the notice of retirement was without jurisdiction as the same had been issued by an authority who did not have the competence to appoint the respondent as Sub-Divisional Officer. Issue No. 9 was also decided in favour of the respondent and it was held that cuts made in the salary of the respondent were illegal as no opportunity had been given to him to show cause against the cuts imposed. On issue No. 8 it was held that the respondent was entitled to the amount of Rs. 34,633/-. However, the prayer for interest was not agreed to. It is against this judgment and decree the present appeal has been filed.

4. The learned counsel for the appellant has confined his challenge to the findings of the trial Court in respect of issue Nos. 6 to 11 only. In respect of issue No. 6 regarding res-judicata, it was contended that before filing the present suit, the respondent had challenged the validity and legality of notice, Exhibit P. 14, dated 3rd March, 1966, by which the service of the respondent was sought to be terminated by way of his pre-mature retirement after the lapse of three months in a writ petition (C.W. No. 1634 of 1966) filed on 28th July, 1966, and the same had been dismissed and that the same matter could not be re-agitated in the present suit as the decision in the writ petition, operated as res-judicata. In the said writ petition, the notice of premature retirement had been challenged on two grounds (1) that the plaintiff had been retired as a measure of punishment as some inquiry had been held against him but the same was not in accordance with law and the principles of natural justice, and (2) that the plaintiff had been discriminated against. The writ petition had been dismissed on the ground that the notice had been issued not as a measure of punishment. In the present suit this notice has been challenged mainly on two grounds, firstly, that the notice for compulsory retirement was not to terminate his service as Sub Divisional Officer but as Sectional Officer and thus it was not a notice to retire the plaintiff as Sub-Divisional Officer, and, secondly, that the notice had been issued by the Chief Engineer who was not the appointing authority of the plaintiff as Sub-Divisional Officer. The trial Court while returning the finding in respect of this issue in favour of the plaintiff held that the principle of constructive res-judicata was not applicable where one of the two proceedings i.e. question was not a suit. According to the learned counsel for the appellant, not only the general principles of res-judicata are fully applicable and become operative when one of the two

proceedings is not a suit, as in the present case, but even the principles of constructive res-judicata are also applicable in view of the ratio of a number of Supreme Court decisions.

5. So far as the applicability of the general principle of res-judicata is concerned, where the matter in question has been decided in a previous proceeding, whether both the proceedings are suits, or one of the proceedings is a writ petition or a proceeding of any other kind the controversy was set at rest by their Lordships of the Supreme Court in *Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat)*, wherein it was held as under:--

The provisions of section 11 CPC are not exhaustive with respect to an earlier decision operating as res-judicata between the same parties on the same matter in controversy in a subsequent regular suit and on the general principle of res-judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a Court competent to decide, it will operate as res-judicata in a subsequent regular suit. It is not necessary that the Court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject-matter. The nature of the former proceeding is immaterial. There is no good reason to preclude such decision on matters in controversy in writ proceedings under Article 226 or 32 of the Constitution from operating as res-judicata in subsequent regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of the finality of decisions after full contest. Consequently on the general principle of res-judicata the decisions of the High Court on a writ petition under Article 226 on the merits on a matter after contest will operate as res-judicata in a subsequent regular suit: between the same parties with respect to the same matter.

The same principle was reiterated in *Union of India (UOI) Vs. Nanak Singh*,

6. In *Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others*, it was laid down that the principle of constructive res-judicata was also equally applicable in such proceedings. It was held as under:--

If constructive res-judicata were not applied to such proceedings, a party could file as many writ petitions as he liked and take one or two points every time. That clearly was opposed to considerations of public policy on which res-judicata was based and would mean harassment and hardship to the opponent. Besides, if such a course were allowed to be adopted, the doctrine of finality of judgments pronounced by the Supreme Court would also be materially affected.

The learned counsel for the respondent challenged this proposition and relied upon *The Amalgamated Coalfields Ltd. and Another Vs. The Janapada Sabha, Chhindwara*, in which it had been held that constructive res-judicata which is special and artificial forms of res-judicata enacted by section 11 of the CPC should not generally be applied to writ petitions filed under Article 32 or Article

226 of the Constitution. However, the ratio of this judgment was considered in *Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others*, and was explained. The Supreme Court had also the occasion to pronounce on the question of applicability of the principle of constructive res-judicata where both the proceedings or either of them are not suits, in *T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others*, , and in *State of U.P. Vs. Nawab Hussain*, . In the latest judgment the Supreme Court, after considering all the decisions referred to above, laid down that the principle of constructive res-judicata was applicable.

7. In his effort to rebut the above proposition of law, the learned counsel for the respondent relied upon a number of judgments of several High Courts. However, in view of the law laid down by their Lordships of the Supreme Court in *State of U.P. v. Nawab Hussain* (supra) none of the decisions cited need be considered. It was then contended by the learned counsel that the principle of constructive res-judicata is applicable only to those cases where the party who wants to raise the matter in a subsequent proceeding, could have raised the same in the earlier proceeding. So far as the present case is concerned, the argument is that at the time of filing the second writ petition on 28th July, 1966, in which the notice for retiring the respondent, dated 3rd March, 1966, was challenged, the respondent had been already reverted from the post of Sub-Divisional Officer to the post of Sectional Officer and the said order of reversion had been challenged in the first writ petition filed in 1965 which was decided by Gurdev Singh, J. as he then was) by his order dated 16th May, 1967 Exhibit P. 1. Thus at the time the second writ petition was filed, it was not permissible to the respondent to challenge the notice of retirement on the ground that the authority issuing the same i.e. the Chief Engineer, was not the competent authority to retire the respondent as Sub-Divisional Officer. If the respondent was working as Sectional Officer and had been retired as such by the notice, the same had been issued by a competent authority. The Chief Engineer was the appointing authority of the respondent as Sectional Officer, but he was not his appointing authority as Sub Divisional Officer. The second contention raised is that after the decision of the first writ petition on 26th May, 1967 by Gurdev Singh, J., by his order, Exhibit P. 1, by which the order of reversion passed against the respondent was quashed, the impugned notice to retire the respondent as Sectional Officer automatically became exhausted and was rendered inoperative and void, and, therefore, it was not necessary for the respondent to challenge the same in the second writ petition which was already pending, or in the suit out of which the present appeal has arisen. On the other hand the learned counsel for the appellant has emphasised that the notice to retire the respondent was not to retire him only as Sectional Officer but also to retire him from service in whatever capacity he was. It was further contended that the order of reversion issued against the respondent being violative of Article 311 of the Constitution as held by Gurdev Singh, J. in his order Exhibit P. 1, was void and nonest and thus did not stand in the way of the respondent for challenging his notice of retirement also on the

ground that the same had been issued by an incompetent authority.

7. For the purpose of appreciating the controversy, notice of retirement, Exhibit P. 14, may be reproduced below:--

To

Shri Madho Ram Gupta,

Sectional Officer

c/o The Superintending Engineer,

P.W.D. B & R Patiala Circle,

Patiala

Memo No. 2349-E II, dated 3rd March, 1966

Sub : Age of compulsory retirement raising of.

In accordance with the instructions contained in Punjab Government Circular letter No. 5410-3GS-63/11926, dated 28th March, 1963 from the Chief Secretary to Government Punjab, and the provision contained in Punjab Government Finance Department notification No. 1243-r FRI 64/11143, dated 4th February, 1964 it has been decided to retire you from Government service on 26th June, 1966 (A.N.) the date on which you will attain the age of 55 years. Accordingly you are hereby served with a 3 months" notice as required under the instructions and provision contained in rule 5.32 of C.S.R. Vol. II to retire you from Government service on 26th June, 1966 (Afternoon).

Sd/- Chief Engineer(s) Punjab PWD, Buildings & Road Branch, Patiala.

Perusal of this notice leaves no doubt that the respondent was addressed in this notice as Sectional Officer and thus he was sought to be retired from service as such. Otherwise also it does not stand to reason that the authority, who had reverted the respondent from the post of Sub-Divisional Officer to that of Sectional Officer and that order had not been quashed by any Court, would still treat him as Sub-Divisional Officer and retire him as such. Faced with this situation the learned counsel for the appellant relied upon the following principles laid down by their Lordships of the Supreme Court regarding constructive res-judicata in State of U.P. Vs. Nawab Hussain,

4. But it may be that the same set of facts may give rise to two or more causes of action. If in such a case a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. Courts have therefore treated such a course of action as an abuse of its process.....

8. It is not in controversy before us that the respondent did not raise the plea in the writ petition which had been filed in the High Court that by virtue of clause

(I) of Article 311 of the Constitution he could not be dismissed by the Inspector General of Police as he had been appointed by the the Inspector General of Police. It is also not in controversy that that was an important plea which was within the knowledge of the respondent and could well have been taken in the writ petition, but he contended himself by raising the other pleas that he was not afforded a reasonable opportunity to meet the case against him in the departmental inquiry and that the action taken against him was mala fide. It was therefore not permissible for him to challenge his dismissal in the subsequent suit on the other ground that he had been dismissed by an authority subordinate to that by which he was appointed. That was clearly barred by the principle of constructive res-judicata, and the High Court erred in taking a contrary view.

8. In my considered opinion neither of the two principles as referred to above is applicable to the facts of the present case. As discussed above, the notice, Exhibit P. 14, was meant to retire the respondent as Section Officer and not as Sub-Divisional Officer. Therefore, when the order of reversion was set aside in a writ petition and the respondent was reinstated as Sub-Divisional Officer, this did not confer any new cause of action on the respondent. In fact after the quashing of the order of reversion and consequential revival of the status of the respondent as Sub-Divisional Officer, the notice of retirement was rendered automatically inoperative and ineffective, because the same was applicable to the respondent so long as he was continuing in service only as Sectional Officer, and as soon as his status improved by the operation of the judgment of the High Court, the notice lost all vitality. The respondent also cannot be held to be in such a position that he could have or ought to have challenged the notice on the ground that the same had been issued by an incompetent authority being not appointing authority of the respondent as Sub-Divisional Officer. At the time of filing of the second writ petition the respondent was not entitled to claim himself as Sub-Divisional Officer so long as his earlier petition filed in 1965 challenging the order of reversion, had not been decided finally in his favour. According to the learned counsel for the appellant, the order of reversion of the respondent was held to be illegal and violative of Article 311 of the Constitution by Gurdev Singh, J., and as such the said order was void and non-est, and the respondent was entitled to treat himself as Sub-Divisional Officer and consequently challenge the notice of retirement in the second writ petition on all possible grounds including the ground which was taken in the present suit. The submission, though appears to be plausible in the first instance, has no force. If the order of reversion was void, the impugned notice retiring the respondent as Sectional Officer automatically became inoperative and exhausted and it was, therefore, not necessary to challenge the same in the second writ petition. In the alternative, if the order of reversion was valid, the notice of retirement had been issued by the competent authority and there was no question of the respondent taking this objection in the second writ petition.

9. The learned counsel for the appellant relied upon Sakal Deep Sahai Srivastava Vs. Union of India (UOI) and Another, Union of India (UOI) Vs. P.V. Jagannath

Rao, & Jai Chand Sawhney v. Union of India 1969 S.L.R. 879, in support of the proposition that if an order is void, it is non-est and does not stand in the way of the aggrieved party. In Sakal Deep Sahai Srivastava Vs. Union of India (UOI) and Another, the appellant was a railway employee. He filed a suit on 27th November 1962 for a declaration that from 1st July 1949, the date of his illegal reversion, up to 30th September 1959, the date of his retirement, he was a railway employee on a salary ranging from Rs. 450/- to Rs. 575/- per month together with 20% special pay from 10th May 1956 to 30th September 1969, and increased gratuity, and that after his retirement he became entitled to the appropriate pension and gratuity allowance. Their Lordships of the Supreme Court agreed with the finding of the High Court that the order of reversion was void and inoperative, but as regards limitation, it was held as under:--

We think that the High Court was right in treating the order of reversion passed against the petitioner to be void and inoperative, or "non-est". The result was that no declaration was needed for the purpose of enforcing a claim which fell within 3 years. Consequently, only the amount which fell within three years of the suit filed could be decreed.

Perusal of the entire judgment in that case shows that the question of res-judicata was not at all under consideration and the only question which fell for determination was as to when the cause of action arose for the purpose of Article 102 of the Limitation Act.

10. In Union of India (UOI) Vs. P.V. Jagannath Rao, 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, and that 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. It was further held that an order cancelling the dismissal or reinstating the civil servant is entirely superfluous and that the order of reinstatement does not furnish a new cause of action for recovery of salary.

11. Similarly in 1969 S.L.R. 879 (supra), the Supreme Court considered the nature of the order of dismissal as void from the point of view of limitation regarding recovery of wages.

12. On the other hand, the learned counsel for the respondent has relied upon Jiwan v. Deputy Director of Consolidation, U.P. 1970 All. L.J. 1413 in which during the pendency of a suit u/s 180 of the U.P. Tenancy Act, the U.P. Zamindari Abolition and Land Reforms Act was passed and as a consequence thereof a fresh right accrued to the petitioner. It was held that the petitioner could have taken that plea in that very suit, but if he did not do so, it cannot be said that his subsequent suit which had nothing to do with the cause of his previous suit, would be barred by section 11, explanation (IV) of the Civil Procedure Code.

13. It is clear from the ratio of the decision in State of U.P. Vs. Nawab Hussain,

that the essential ingredient for applying the principle of constructive res-judicata to a subsequent proceeding is if the party could and ought to have agitated the matter in the previous proceeding. In the present case there is no manner of doubt that the respondent could not attack the notice of retirement on the ground that the same had not been issued by a competent authority because the Chief Engineer was not the appointing authority of the respondent as Sub-Divisional Officer. At the time of filing of the second writ petition the respondent was not working as Sub-Divisional Officer on account of the order of his reversion and, therefore, was not competent to take this objection. Once the respondent had challenged the order of his reversion by way of a writ petition, he could not treat himself as Sub-Divisional Officer before the final decision of the writ petition.

14. In view of the above discussion, the finding of the trial Court on issue No. 6 is upheld to the extent that the decision of this Court, dated 22nd January 1968 (Exhibit P. 3) does not operate as res-judicata in the present suit, though the finding to the extent that the principle of constructive res-judicata is not applicable where one of the two proceedings is not a suit, cannot be agreed to in view of the decision of their Lordships of the Supreme Court referred to above.

15. The finding of the trial Court in respect of issue No. 10 has been challenged on the ground that the order of retirement, dated 3rd March, 1966 is not vitiated because the same was issued by the Chief Engineer who was the competent authority of the respondent. In this regard reference was made to the observations of Gurdev Singh, J. (as he then was) in this Judgment, Exhibit P. 1, at page 201 of the record where it was noticed that the respondent had been promoted as Sub-Divisional Officer vide order of the Chief Engineer, dated 31st August 1961. From this the learned counsel wants to derive the conclusion that the respondent had been promoted as Sub-Divisional Officer by the Chief Engineer and therefore, his appointing authority even as Sub-Divisional Officer was the Chief Engineer. Against this, the learned counsel for the respondent has relied upon a letter dated 27th July 1961 from Shri B.B. Vohra, I.A.S., Secretary to Government, Punjab, P.W.D., to the Chief Engineer, Punjab, P.W.D. B. & R. Branch Patiala (Exhibit P. 11). Its perusal shows that it was the Governor of Punjab who was pleased to approve the promotion of a number of Sectional Officers of the P.W.D. B. & R. Branch, as listed in the aforesaid letter, as Sub-Divisional Officers. This list includes the name of the respondent. This is also corroborated by the statement of Ram Parkash P.W. 3, an Assistant in the Office of the Chief-Engineer. In re-examination he categorically stated that the appointing authority of the Sub-Divisional Officer is the State Government. This is further supported by a letter addressed by the Secretary to Government, Punjab, to the Chief Engineer, Punjab, P.W.D., B. & R. Branch, on 18th June, 1968 (Exhibit P. 25), which shows that the promotion of the respondent as Sub-Divisional Officer was approved by the Governor of Punjab. In view of this cogent and convincing evidence on the record, the contention of the learned counsel for the appellant has to be rejected. Consequently issue No. 10 is decided in favour of the respondent and against the appellant, and it is held that the notice of

retirement of the respondent was not issued by the competent authority.

16. Regarding issue No. 7, it is contended by the learned counsel for the appellant that the present case is governed by Article 102 of the Limitation Act, 1908, corresponding to Article 7 of the Limitation Act, 1963, according to which the period of limitation is three years for the purpose of recovering wages and the time begins to run when the wages are due. This is not disputed by the other side. According to the learned counsel for the appellant the cause of action for the recovery of arrears of salary and other dues accrued to the respondent on 26th May, 1967 when the order. Exhibit P. 1, was passed by Gurdev Singh J. (as he then was) in the first writ petition filed by the respondent whereby the order of his reversion was quashed. According to the learned counsel for the appellant the said order, Exhibit P. 1, did not give any cause of action as it was held by the learned Judge deciding the writ petition that the impugned order of reversion was illegal and violative of Article 311 of the Constitution and as such was void and nonest. In view of the order being void and non-existent, the respondent was not entitled to treat the same as any obstruction in the way of his filing a suit for arrears of salary that accrued to him as Sub-Divisional Officer from month to month. In this respect reliance was placed by the learned counsel for the appellant on a Full Bench decision of this Court in Jagdish Mittar v. Union of India (1969) 71 P.L.R. 877, in which it was held as under:--

A public servant, after his dismissal or removal has been declared to be unlawful, can claim wages or salary only up to a period three years and two months from the date when the cause of action accrued.

On the other hand, the learned counsel for the respondent has relied upon the decision of a Division Bench of this Court in State of Punjab v. Shri Lakshaman Sarup Gupta R.F.A. No. 610 of 1969. Regular First Appeal No. 610 of 1969, decided on December 5, 1973. In the latter case the plaintiff was working as Chief Engineer on October 8, 1955 when he was placed under suspension with immediate effect and a departmental inquiry was ordered against him. He was not permitted to retire on December 20, 1957. In the inquiry, he was exonerated of all the charges, and by an order dated February 20, 1968, the Governor of Punjab reinstated him but further ordered his retirement from service from the same date. The period of suspension of the plaintiff was to be treated as on duty, but he was not allowed more than the subsistence allowance for this period. His appeal was accepted by the President of India, and it was directed that the plaintiff must be allowed his full emoluments for the period of suspension. The Punjab Government was informed of this decision by a letter dated January 20, 1966 issued by the Government of India. The plaintiff after giving notice u/s 80, Civil Procedure Code, filed the suit for recovery of the amount due. In these circumstances it was held by the Division Bench that the plaintiff was not entitled to get more than the subsistence allowance for the period of suspension till the order of the Governor to this effect had been set aside in appeal and, therefore, the cause of action for the recovery of the amount accrued to him under Article

102 of the Limitation Act from the date when the Government of Punjab was informed of the decision by the President of India.

17. So far as the present case is concerned, we have to see whether the order of reversion of the respondent which was quashed by the order of Gurdev Singh, J. (as he then was) (Exhibit P. 1), stood in the way of the respondent in filing a suit for recovery of his arrears of salary as Sub-Divisional Officer. According to 1969 SLR 879 (supra) and Sakal Deep Sahai Srivastava Vs. Union of India (UOI) and Another, an order which is violative of Article 311 of the Constitution is void and no declaration is needed for the purpose of enforcing a claim which fall within three years of limitation Under the circumstances the order of his reversion in the present case being void, the respondent was not required to wait for the decision of his writ petition, in which the said order was quashed, for the purpose of filing the present suit. The cause of action for the purpose of claiming his salary as Sub-Divisional Officer accrued to the respondent as soon as his salary fell due every month. Similarly, the cause of action for recovery of other dues accrued to him on the date when the same were withheld. According to Full Bench decision of this Court 1969 P.L.R. 877 (supra), the respondent is entitled to claim his salary and other dues which fell due within a period of three years and two months.

18. Thus the respondent is entitled to recover such amounts of I his salary and other dues which are within three years and two months from the date of filing of the suit.

19. The suit was filed on 4th October, 1969. The claim of the respondent will be within time for the amounts which become payable after 3rd August, 1966. The details of the claim made by the respondent are contained in Annexure "A" to the plaint (Exhibit P. 26). Item No. 2 in this claim is for Rs. 22,340.16, which comprises of the salary of the respondent for various period from 10th July, 1966 to 26th June, 1969. Salary for the period from 10th July, 1966 to 10th August, 1966 will be payable to the respondent after 10th August, 1966. Similarly the salary for the subsequent periods will be payable to him thereafter. Thus all this claim is clearly within limitation. Then item No. 6 for Rs. 889 93 pertains to the rent claimed by the respondent from 21st July, 1966 to 26th June, 1969. This is also within limitation. Item No. 7 is for Rs. 9,282/- comprising of gratuity for 13 months which was payable to the respondent after his retirement. This amount is thus also within limitation. Limitation regarding these items has not been challenged by the learned counsel for the appellant. The claim of the respondent regarding the amounts of Rs. 672.85 (item No. 1), Rs. 418/-(item No. 3) and Rs. 250/- (item No. 5) and Rs. 2510.73 (item No. 8) in Exhibit P. 26 is time-barred as the same relates to the period before 3rd August 1966. Item No. 1 for Rs. 672,85 is claimed by the respondent as difference in pay at the rate of Rs. 25/- p.m. from 26th November, 1964 to 25th November, 1965 and at the rate of Rs. 50/- p.m. from 26th November, 1965 to 9th July, 1966. According to the learned counsel for the respondent, this amount was withheld from the respondent as he

had not passed the departmental Professional Examination, and intimation to this effect was sent to the respondent by the letter Exhibit P. 7, dated 18th July, 1969. According to the learned counsel cause of action secured to the respondent from 18th July 1969 when the reason for withholding this amount was conveyed to the respondent. This cannot be agreed to. The respondent became entitled to the various amounts in respect of each month when he was paid less salary, and this amount pertains to the period from 26th November, 1964 to 9th July, 1966. Clearly this period is beyond limitation. Consequently the claim of the respondent in this regard is time-barred. The respondent has claimed a sum of Rs. 48/- (item No. 3) which comprises of his pay for the months of June and July, 1956 at the rate of Rs. 290/- per month. In support of this claim, reliance has been placed on the letter Exhibit P. 24, from the Executive Engineer, Rohtak Provincial Division, to the Executive Engineer Provincial Division, Bhatinda, written on 25th June, 1969, according to which a direction was issued to pay this amount to the respondent. It appears that in spite of this direction the amount was not paid. The respondent however, is not entitled to claim that the cause of action accrued to him from the date of this letter concerning this amount. The respondent was not paid his salary for two months of June and July, 1956 for one reason or the other. He was entitled to file the suit for the recovery of the same within a period of three years and two months from the date when this salary became due. The claim for this amount is thus hopelessly time-barred. Claim of Rs. 250/- (item No. 5) is based on the ground that some amounts were illegally recovered from the respondent from time to time by the Sub-Divisional Officer, Sonapat (Rohtak Provincial Division). The details of this amount as given in Exhibit P. 26 show that this amount had been recovered from the respondent at various times from November 1957 to March 1958. Clearly this claim is also time-barred. Lastly, the respondent has claimed an amount of Rs 2510.73 referred to in item No. 3 in Exhibit P. 26. The details as given in this item show that various amounts had been recovered from the respondent in respect of rent or shortage of some material in his charge. According to the letter, Exhibit P. 23, dated 29th July, 1969 this amount as recovered from the respondent was ordered to be credited to the Punjab State under two heads of account. According to the learned counsel for the respondent out of this amount a sum of Rs. 853 45 was paid to the respondent, which is proved by the letter Exhibit P. 5 dated 10th July 1969, and thus the remaining amount of Rs. 1657.28 should be held as within time. According to the learned counsel a notice dated 12th June 1969 was served on the appellant to produce certain documents including some correspondence but the same was not produced as is clear from the statement of Ram Parkash P.W. 3. It is stated that the respondent wanted to prove as to when these recoveries were illegally made from him, but as the documents in possession of the appellant were not produced, the respondent was deprived of the opportunity to prove the same and, therefore, it should be presumed that all these amounts are within time. This contention is bereft of all substance. The respondent must be in possession of the information as to when the various amounts were recovered from him though

illegally as alleged by him. In any case, the fact remains that the respondent has not been able to produce the necessary evidence to establish that the claim regarding this amount was within time.

20. The net result of the above discussion is that the claim of the respondent in respect of item No. 2 (for Rs. 22,340.16), item No. 6 (for Rs. 889.93) and item No. 7 (for Rs. 9,232.00), the total being Rs. 32 512.00), is within time and the remaining claim is barred by time. The decree passed by the learned trial Court for the recovery of Rs. 34,633 47 in favour of the respondent has thus to be modified accordingly.

21. For the reasons mentioned above, the appeal fails and is dismissed with costs, but with this modification that the respondent is entitled to recover Rs. 32,512.09 from the appellant. The result is that the suit of the plaintiff-respondent is decreed for Rs. 32,512 09 with costs, throughout.