
(1989) 05 AHC CK 0009
In the Allahabad High Court
Case No : Second Appeal No. 1905 of 1981

Uma Shanker Sharma

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 12-05-1989

Acts Referred:

Limitation Act, 1877 — Article 120
Limitation Act, 1963 — Article 113

Citation : (1989) 2 AWC 1210

Hon'ble Judges : S.N. Sahai, J

Bench : Single Bench

Advocate : Pradeep Chandra, for the Appellant; P.N. Katju and Lalji Sinha, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Sahai, J.—This is a second appeal against the decree dated 28th August, 1980, passed by Sri M.P. Singh, 7th Additional District Judge, Gorakhpur. Uma Shanker Sharma, Appellant, instituted a suit against the Union of India, respondent, for declaration that he is a temporary employee having CPC scale of Rs. 200-400 per month with effect from June, 9, 1974 on the post of carpenter in the N.E. Railway and he is entitled to be paid all emoluments and salary attached to that post. He also claimed the relief of injunction to direct the respondent to place him in the said scale and to pay him all the emoluments salary and benefits of the said post. The suit was resisted by the respondent on a number of grounds. It was inter alia pleaded that the suit is barred by time. The learned Munsif (City) Gorakhpur, who tried the suit, accepted this plea and dismissed the suit with costs by judgment dated November 20, 1979. The Appellant preferred an appeal against the said judgment and the appeal was also dismissed by the learned Additional District Judge on August 28, 1980. He affirmed the finding of the trial court that the suit is barred by time under Article 113 of the Limitation Act, hence, this appeal.

2. It has been urged on behalf of the Appellant that the suit is within, time. According to the plaint allegations the Appellant was appointed as casual "Khalasi" on January 27, 1973, and worked as such till July 10, 1973. He was subsequently appointed as casual carpenter on July 18, 1973 and continuously worked as such till May 8, 1974 for 180 days and in accordance with the Mia Bhoi Tribunals Award after completion of four months of continuous service he was entitled to get the CPC scale. However, he was not given the said scale and was appointed again on the post of casual carpenter on July 4, 1974 and worked as such till December, 8, 1974 and thereafter no work was entrusted to him and his services were terminated without any order.

3. In the written statement it was alleged that the Appellant worked as casual labour from June 27, 1973 to July 10, 1973 with break from February 26 to March 20, April 20 to April 25 and May 9 to June 16, 1973. Thus it was denied that the Appellant had worked continuously for four months or more as alleged by him. It was further stated that the Appellant did not work from July 10 to July 17, 1973. He was again engaged as casual labour (Carpenter) on July 18, and worked as such till December 8, 1974 with a break on 1st and 2nd October, 1974 and again from November 11 to November 17, 1974. On the basis of these allegations the claim of the Appellant for the grant of CPC scale or temporary status was repudiated.

4. The learned Munsif held that the Appellant worked continuously from November 6, 1973 to May 1, 1974. He had completed continuous service for 120 days upto March 4, 1974 and had thereby become entitled to CPC scale. However the said scale was not granted to him on March 4, 1974. The cause of action, therefore, arose on that every date. Since no suit was filed within three years from March 4, 1974 the suit was barred by time.

5. The contention of the Appellant before the lower appellate court was that the cause of action, according to the plaint, arose on May 9, 1974, and the Appellant had asked to be placed in CPC scale with effect from June 9, 1974, and finally the cause of action arose, according, to him, on December 8, 1974, after which date he was given no work by the respondent. This contention was repelled by the learned Additional District Judge on the ground that the cause of action arose on the date when the Appellant was not placed in the CPC scale after completion of 120 days service. Therefore, under Article 113 of the Limitation Act the suit is barred by time.

6. It is common ground between the parties that for purposes of limitation the suit is governed by Article 113 of the Limitation Act, 1963, and the period of limitation is three years from the date when the right to sue accrues. In AIR 1930 270 (Privy Council) it was observed that there can be no right to suit until there is accrual of the right asserted in the suit and its infringement or atleast a clear and unequivocal threat to infringe that right by the Defendant against whom the suit is instituted. After referring to the said case and some other cases it was held by their lordships of the Supreme Court in Mst. Rukhmabai Vs. Lala

Laxminarayan and Others, , the case on which reliance has been placed on behalf of the Appellant, that:

The right to sue under Article 120 of the Limitation Act accrues when the Defendant has clearly and unequivocally threatened to infringe the right asserted by the Plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right.

It may be mentioned that Article 113 reproduces Article 120 of the old Limitation Act, 1908, to which a reference has been made above. The learned Counsel for the Appellant has submitted that the right to sue accrues when the cause of action arises. In this connection he has referred to *Salima Bibi v. Sheikh Muhammad* ILR All 131, to indicate the classical statement of law that a cause of action means every fact which it would be necessary for the Plaintiff to prove if traversed in order to support his right to the piece of evidence which is necessary to prove each fact.

7. It will be seen that in the present case the right which has been claimed by the Appellant is that he became entitled to get CPC scale with effect from June 9, 1974 and this right is claimed by him on the ground that he had worked on the post of carpenter for more than 120 days continuously from July 18, 1973 to May 8, 1974. The said scale was not given to him by the respondent and it amounted to denial of the right claimed by the Appellant. The matter did not rest there. The Appellant was also thrown out of employment and it was on July 4, 1974 that he was, according to his own admission in the plaint, was appointed on the post of casual carpenter and then worked as such till December 8, 1974. Thus, on May 9, 1974, there was not only an accrual of the right to sue in favour of the Appellant but there was also an effective invasion of that right by the respondent. The cause of action arose on May 9, 1974 and this is what has also been clearly admitted by the Appellant in para 11 of the plaint. If the services of the Appellant had not been terminated on May 9, 1974 and he had not been out of employment from May 9 to July 3, 1974, the matter might have been different. In that case it might have been open to the Appellant to raise the contention that the non-payment of salary to him in the CPC scale amounted only to successive denials of his right to get salary in the said scale and the actual infringement of that right or effective threat to the infringement of that right when the services of the Appellant were finally terminated on December 8, 1974. In these circumstances there can be no scope for the contention that the Appellant was not bound to institute suit at the first denial of his right by the respondent and in view of the successive denials he has a right to elect as to when he should bring a suit for vindicating his right. As discussed above the right to sue accrued to the Appellant on May 9, 1974 and the suit not having been brought within three years from that date is barred by time. The Appellant is not

entitled to have the benefit of December 8, 1974 (the date of termination of services in the second phase of his employment for bringing within limitation the suit which was filed on November 26, 1977).

8. In the result, the concurrent view taken by the courts below appears to be justified that the suit is barred by time. The appeal has no force and is accordingly dismissed. However, there shall be no orders as to cost.