

(1974) 07 MAD CK 0037
In the Madras High Court

Union of India (UOI)

APPELLANT

Vs

N.R. Venkatarama Naidu

RESPONDENT

Date of Decision : 10-07-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1975) ILR (Mad) 33 : (1975) 88 LW 378 : (1975) 1 MLJ 345

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Judgement

Ramaprasada Rao, J.—The Union of India, the defendant in O.S. No. 4654 of 1966, on the file of the City Civil Court, Madras is the appellant. The plaintiff entered service in the quondam M.S.M. Railway Company in 1929 and was promoted as Station Master in or about March, 1941. In 1958, to wit, from 25th August, 1958, the plaintiff's services were terminated in the purported exercise of the power vested in the Railways under Rule 148 of the Indian Railways Establishment Code. The constitutional validity of this Rule came up for consideration before the Supreme Court, though no doubt in ancillary proceedings, and the Supreme Court by its judgment in *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, dated 5th December, 1963 struck down the rule as unconstitutional. The plaintiff under Exhibit A-6 sought for his reinstatement on the strength of the ratio of the judgment of the Supreme Court and requested the General Manager of the Southern Railway to reinstate him at an early date. On 10th July, 1964, under Exhibit A-8, the Divisional Superintendent, Tiruchirapalli, wrote to the plaintiff stating that it had been decided to reinstate him in service and that he would be posted to a particular station and asking the plaintiff to report to duty immediately. This was followed up by another letter Exhibit A-9 dated 13th July, 1964, under which the plaintiff was posted to a particular station and he was informed that he was being reinstated from 13th July, 1964 in the Station Master's category. The plaintiff however made further representations in April, 1965 to which the defendant replied under Exhibit A-10 reading as under:

With reference to our above, the G.M. has replied as under : "Though the period of absence of the abovenamed from the date of removal from service to the date of reinstatement i.e. from 25th August, 1958 to 12th July, 1964 was treated as duty, the payment of arrears of pay and allowances could be restricted to the period covered by the law of limitation i.e. for a period of 3 years backwards from the date of reinstatement (from 13th July, 1961 to 12th July, 1964).

Thereafter it is common ground that the plaintiff assumed office, but he was pressing for the payment of his salary for the period commencing from 25th August, 1958 to 12th July, 1964, the day preceding-the one on which he was reinstated in service and claimed that he was entitled to full salary and allowances during that period notwithstanding the statement made under Exhibit A-10 by the defendant in their communication dated 15th July, 1965. The plaintiff not having had satisfaction of the claims made by him issued counsel's notice u/s 80 of the CPC under Exhibit A-11 dated 22nd September, 1966 to which he got a reply from the authority to the-effect that the plaintiff was entitled to the payment of arrears of pay and allowances restricted to the period covered by the law of limitation, namely a period of three years backwards from the date of reinstatement, the amount being reduced by the emoluments earned elsewhere during the period referred to. The plaintiff's claim for the payment of the full salary and allowances was therefore denied. It became necessary for the plaintiff to institute the present action after receipt of the reply-notice from the defendant claiming back arrears of pay and allowances amounting to Rs. 8,120 together with interest at six per cent per annum from the date of the plaint. The defendant's only contention was that the claim was barred by limitation and that it was erroneous on the part of the plaintiff to assume that the right to sue accrued to him on the date of reinstatement. The usual defence of the Railway was also taken that the notice was not proper. On the above pleadings, the following issues were raised:

1. Is the plaintiff entitled to salary from, 25th August, 1958?
2. Whether the plaintiff's claim for arrear of salary is barred by limitation?
3. Whether the suit is bad for want of valid notice u/s 80, Civil Procedure Code?
4. Is there any cause of action for the suit?
5. To what reliefs the parties are entitled?

The usual answer was also given by the Court below that the notice was in order. On issues 1, 2 and 4 the Court below held that the plaintiff's claim for arrears of salary was not barred by limitation and that the cause of action to lay the present action was referable to the order of reinstatement and incidentally to the date of the decision of the Supreme Court, and cumulatively taken those dates gave a fresh cause of action to the plaintiff to claim the suit amount. In the result, the suit was decreed as prayed for. It is as against this the present appeal has been filed.

2. The learned Counsel for the appellant strenuously contends that the correspondence that passed between the parties, more particularly Exhibits A-8, A-9 and A-10, read with ratio in the Supreme Court judgment under which Rule 148 of the Indian Railways Establishment Code was struck down as unconstitutional, would not give a fresh cause of action to the plaintiff and that, if the situation is thus, understood, the suit claim is barred by limitation. On the other hand, the plaintiff stated that Exhibit A-10 contained an unconditional acknowledgment to the effect that the plaintiff had been reinstated and that the period between 25th August, 1958 and 12th July, 1964, would be treated as period during which he was on duty. It is on this basis the plaintiff sought to sustain the judgment of the lower Court and would also urge that the claim is not barred by limitation.

3. Mr. Venkateswara Rao, the learned Counsel for the appellant, brought to our notice certain decisions of the Supreme Court, which according to him, would cover the situation. But we are afraid that those decisions were rendered on the peculiar facts which arose in those cases and having regard to the specific contents of Exhibit A-10, the force of which we shall presently consider, the decisions cited by the learned Counsel for the appellant are certainly distinguishable. In *Triloki Nath Vyas v. State of Uttar Pradesh* (1968) 2 S.C.W.R. 426 the facts as it appears from the report were that the plaintiff whose conviction in a Criminal Court was set aside by the High Court, sought for reinstatement. On such application, the Government ordered his reinstatement with effect from the date when he was reinstated and for the : remaining period commencing from the date of his suspension, he was granted one fourth of his salary as allowance. It does, not appear from the report that there was a communication similar to Exhibit A-10 whereunder the plaintiff in the instant case was informed that the period during; which he was kept out of service would be treated as if he was on duty. This case therefore does not strictly apply to the facts of this case. In another Supreme-Court decision brought to our notice, *Jai Chand Sawhney v. Union of India* (1970) 2 S.C.J. 28, the facts are almost similar to the one which appeared in the earlier Supreme Court case. In this case, the plaintiff sued the Union of India for setting aside the order of his removal on the ground that the order was made by an authority subordinate to the appointing authority and that he was not given a fair opportunity to show cause against the action proposed. He claimed a large sum being the arrears of salary and damages fox wrongful termination of employment. The trial Court decreed the suit in part. Against the same both the plaintiff and the Union of India appealed. The plaintiff's appeal was dismissed and even so the Union of India's appeal. With Special Leave, the matter went up to the Supreme Court. Their Lordships considered the effect of Article 102 of the Indian Limitation Act of 1908 and they expressed the view that the period of limitation would commence to run-when the wages accrued due and when in law the servant became entitled to wages and that Rule 2042 of the Railway Establishment Code did not operate to make the wages accrue due on the date of the institution of the suit. In that

view they held that the suit was barred by limitation 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. Here again, we find that there was no correspondence between the Department on the one hand and the aggrieved person on the other, wherein there was a disclosure that the period during which the plaintiff was out of employment was treated as if he was on duty. The Supreme Court therefore considered the case before it on merits disclosed in the pleadings and held in the abstract that the period of limitation under Article 102 of the Limitation Act commenced to run when the wages accrued due. The question still remains in our case as to when it can be said the wages accrued due.

4. Ismail, J., had occasion to refer to the second of the Supreme Court decisions cited above, in *The Union of India (UOI) Vs. C. Kanniah*, . The facts dealt with by Ismail, J., are almost similar to those we have to peruse in the instant case. After referring to the decision of the Supreme Court in *Jai Chand Sawhney v. Union of India* (1970) 2 S.C.J. 288, which was very strongly relied on by the Counsel for the Railways, the learned Judge expressed his view thus:

Even though the decision of the Supreme Court has held that Article 102 of the Limitation Act applied and the right of the public servant to salary accrued from month to month, still I am clearly of the opinion that Exhibit A-7 constitutes an acknowledgment of liability on the part of the appellant of its liability to pay salary to the respondent herein for the period from 21st March, 1957 to 7th February, 1962.

He of course widely stated a proposition which we are of the view it is not necessary for us to delve into further. According to him, the law of limitation has no application whatever to the obligation of a master to pay salary to his servant and the law of limitation is applicable only to proceedings in Court and therefore the reference to law of limitation in Exhibit A-7 is clearly erroneous. As we said, we are not entirely in agreement with the learned Judge in so far as this observation is concerned. But, in another, part of the judgment, the learned Judge expressed the following view with which we agree:

Once the competent authority had decided to reinstate the respondent in service and treat the period from the date of dismissal to the date of reinforcement as on duty, it was the patent and obvious duty of the appellant to pay the salary due to the public servant concerned for the period in question.

Obviously by making the Railways to shoulder a duty which according to the learned Judge was patent, he meant that they held themselves statutorily responsible for the payment of such arrears by communicating to him that the period during which he was out of service would be treated as if he was on duty.

5. Again, a Division Bench of our Court consisting of Sadasivam and V. Ramaswami, JJ., in *Union of India owning the Southern Railway represented by the General Manager, Southern Railway v. G.A. Krishnaswamy* Appeal Nos. 489 of

1964 and 29 of 1965 under similar circumstances, has accepted the view that there is no bar of limitation in such cases. V. Ramaswami, J., speaking for the Bench has said that if in a given letter or communication a direction for payment of a debt accompanies an unconditional acknowledgment of liability, that would not affect the effectiveness of the acknowledgment of the entire claim and that if a debtor admits that he is liable and at the same time gives a wrong reason for not paying the debt, either in part or whole, the acknowledgment would nevertheless keep the debt alive.

6. It is therefore necessary for us to consider the impact and import of Exhibits A-8, A-9 and A-10. No doubt in Exhibit A-8 and A-9 the Department informed the plaintiff that he would be reinstated in service. But under Exhibit A-10 the General Manager of the Southern Railway said that though the period of absence of the plaintiff from the date of removal from service to the date of reinstatement, that is from 25th August, 1958 to 12th July, 1964 was treated as duty, the payment of arrears of pay and allowances could be restricted to the period covered by the law of limitation. Apparently the language employed in this communication is based upon a circular issued by the Railway Board on 28th April, 1964. Mr. Venkateswara, Rao places considerable reliance on this circular. According to him this circular which was issued by the Board long prior to the date when the plaintiff was reinstated made the position clear and that even if the plaintiff was reinstated later, he should be deemed to have been so reinstated under the terms and conditions of the circular issued by the Board. In the circular marked as Exhibit B-1 the Railway Board has recommended that in such cases the period of absence from the date of termination of service to the date of reinstatement may be treated as duty, but the payment of arrears of pay and allowances may be restricted to the period covered by the law of limitation. This circular was not communicated to the plaintiff, nor is it said that he had knowledge of it. The purport of the circular appears to be recommendatory rather than mandatory. The Board says that such persons who are kept out of service by the wrongful invocation of Rule 148 of the Railway Establishment Code, may be reinstated and the interregnum during which they were kept out of service may be treated as on duty and they may be paid only for three years backwards from the date of reinstatement. It appears therefore to us that the option was still with the General Manager to interpret this and treat such period between the date of removal, and the date of reinstatement as period in which he was on duty. If, therefore the General Manager, in the instant case has so treated the interregnum, then the legal consequence from such a communication flows as a matter of course. This statement that the period would be treated as on duty has a significance, and rationally understood, it means that the Railway was prepared to treat the employee as one who was in service from the date of termination of service to the date of reinstatement. In this sense, we are of the view that there is an acknowledgment which is neither conditioned or conditionable by any clause which the Railways could introduce by themselves and even if they introduce, would have only a self-serving effect. The latter part

of Exhibit A-10 is pressed into service by the learned Counsel for the appellant. As we have said, any superimposition of a condition so as to whittle down however slightly the effect of an unconditional acknowledgment can only be understood as a self-serving assertion or an unnecessary appendage. That, by itself, cannot create rights or destroy rights which have already become vested by reason of the unconditional acknowledgment made by the Department in the first part of the communication Exhibit A-10. In our view, when Exhibit A-10 should be understood as an acknowledgment of a liability to pay the arrears of salary in the sense that the plaintiff should be deemed to have been in service from the date of removal to the date of reinstatement, it cannot be said that the latter part of Exhibit A-10 governs the situation and the claim would be barred by limitation.

7. In a suit for recovery of salary or wages, the Article in the Limitation Act of 1963, which would be applicable is Article 7, corresponding to Article 102 of the Limitation Act of 1908. The third column of Article 7 of the Limitation Act says "when the wages accrue due." This phrase has to be liberally interpreted in a case where an employee's services were wrongfully terminated and later he was reinstated after the employer realised that such termination was unlawful or unconstitutional. During the interregnum he is not entitled to any salary at all under any of the service conditions. When he is in service, obviously, the salary to a Government servant becomes due by the end of the month. But in a case where his services were terminated under a rule of service, which was later declared by the Supreme Court as unconstitutional, then the ordinary rule of limitation to claim the arrears of salary cannot prevail. If it were so, then in a given case, if it takes several years for the unfortunate employee to get redress and to get a pronouncement as to the invalidity of the order of termination and if as is conceivable, the litigation takes more than three years, for him to be reinstated, is it necessary that he should file an empty suit for arrears of salary for the period when he was not in service and, when he is a dismissed servant or a servant whose services have been terminated, and get his suit dismissed only on the ground that he has not been reinstated? It would be an empty formality besides leading to unjust consequences because such a suit would automatically be dismissed as he would be confronted with the order of dismissal or termination for which he cannot have any answer at all. In the light of our observations as above, the third column in Article 7, when the wages accrue due, in a case like the one with which we are faced, has to be interpreted, as we said, liberally and equitably. When an employee whose services have been illegally terminated has been reinstated, and when he is informed that the period during which he was off from service would be treated as if he was on duty, then a fresh cause of action would arise on the date when he was reinstated and on the date when a communication to ; that effect was issued to him. This is also one of the grounds for us to hold that under Exhibit A-10 there is a fresh acknowledgment within the meaning of law

8. We are also of the view that the same result will follow if Exhibit A-10 is

interpreted as a promise held out by the Railways within the meaning of Section 25 of the Contract Act. u/s 25, an agreement made without consideration is void unless it is a promise made in writing and signed by the person to be charged therewith, or by his agent, generally or specially authorised in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits. In any of these cases the law presumes that such an agreement is a contract. Under Exhibit A-10 when the plaintiff was reinstated and when he was assured that the quondam period when he was kept out of service would be treated as if he was on duty, then it is certainly a promise made by the Department in writing to the plaintiff that his entire arrears of pay and allowances during the interregnum, would be paid by the Department. It may be that such an amount which they have admitted impliedly and promised to pay, may be barred on that date. But Section 25(3) protects such contracts as there is a promise, express or implied therein, made by the debtor whereunder he has acknowledged to pay the same notwithstanding the law of limitation. In this sense also, the plaintiff's claim is not barred by limitation.

9. We are therefore, unable to agree with the contentions of the learned Counsel for the appellant. The Court below has come to the right conclusion. The appeal is dismissed with costs.