

(1968) 02 MP CK 0001

In the Madhya Pradesh High Court

Case No : First Appeal No. 67 of 1964

Union of India (UOI)

APPELLANT

Vs

P.V. Jagannath Rao

RESPONDENT

Date of Decision : 14-02-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, 34
Constitution of India, 1950 — Article 311
Government of India Act, 1935 — Section 240
Limitation Act, 1908 — Article 102, 19

Citation : AIR 1968 MP 204 : (1971) ILR (MP) 681 : (1968) JLJ 524 : (1968) 2 LLJ 792 : (1968) 13 MPLJ 328

Hon'ble Judges : T.C. Shrivastava, J;G.P. Singh, J

Bench : Division Bench

Advocate : J.N. Sinha, for the Appellant; C.P. Sen, for the Respondent

Final Decision : Allowed

Judgement

Singh, J.

The respondent entered service as a Guard in 1941 in the Bengal Nagpur Railway and after nationalization of Railways in 1944, he became a servant of the Government of India. By an order of the District Transportation Officer, the respondent's services were terminated with effect from 18th July, 1946. The respondent then instituted Civil Suit No. 257-A of 1949 on 12th September, 1949 in the Court of Civil Judge, Class II, Raipur, claiming a declaration that the order of termination of his services was illegal. This suit was decreed by the Civil Judge on 25th August, 1951, and this decree was ultimately confirmed by the High Court in P. V. Jagannath Rao v. Union of India, Second Appeal No. 492 of 1953, D/- 13-12-1957 (Madh Pra) which was decided by one of us (Shrivastava, J.). It was found by the High Court that the order of termination of respondent's services was grounded on misconduct and amounted to dismissal. It was further found that no inquiry was held against the respondent on the charge of misconduct and the termination order was passed by an authority subordinate to

that by which he was appointed. On these findings the orders of termination of respondent's services was declared to be invalid and void being in violation of Clauses (2) and (3) of Section 240 of the Government of India Act, 1935. After the decision of the High Court, the respondent was reinstated by order passed on 2nd January, 1959 and he joined his post on 30th January, 1959. The respondent then claimed the arrears of his salary till his reinstatement and after certain abortive correspondence, he commenced on 1st March, 1962 the suit which has given rise to this appeal. The claim in the suit was for recovery of a sum of Rs. 45,283-34 P. which comprised of arrears of salary amounting to Rs. 39,263-68 P. for the period 18th July, 1946 upto 29th January, 1959 and interest at 6% per annum amounting to Rs. 7,069-40 P. The Second Additional District Judge, Bilaspur who tried the suit decreed the entire claim on 4th April, 1964. Aggrieved from this decree the Union of India has come up in appeal to this Court.

The first contention raised in appeal is that the entire claim in the suit was barred by limitation. Both parties are agreed that the relevant provision applicable is Article 102 of the Limitation Act, 1908. The disagreement is about the commencement of the period of limitation. According to the appellant the salary becomes due from month to month and the entire claim being for a period beyond three years from the date of the suit, the whole of it was barred by limitation. According to the respondent, the cause of action arose on 2nd January, 1959 when in pursuance to the decision of the High Court, the respondent was ordered to be reinstated. Reference in this connection is made to Para 2042 of the Railway Establishment Code (which corresponds to F. R. 52) and it is contended that till the order of dismissal was in operation, the respondent could not have been paid his salary; that the dismissal order was effective till it was set aside by the order of reinstatement; and that the arrears accrued due on the passing of the order of reinstatement and not before.

The legal effect of non-compliance with Section 240 of the Government of India Act, 1935 has been examined in a number of cases. In *Punjab Province v. Tarachand* AIR 1947 FC 23, where an order of dismissal was passed in breach of Clause (2) of Section 240, the Federal Court held that the order was "utterly void of all effect and was 'in terrore' of law no more than a piece of waste paper". In *High AIR 1948 121 (Privy Council)*, the non-compliance related to Clause (3) of Section 240, and the Privy Council held that the civil servant was entitled to a declaration that the order of dismissal was "void and inoperative" and that he "remained a member of the civil service" at the date of the institution of the suit. These cases have been approved by the Supreme Court in construing Article 311 of the Constitution. In *Khem Chand Vs. The Union of India (UOI) and Others*, where the non-compliance related to Article 311(2), the Court gave a declaration that the order of dismissal was inoperative and the plaintiff was a member of the service on the date of institution of the suit.

It is thus clear that an order of dismissal passed in violation of Section 240 of the Government of India Act, 1935 is inoperative and void from the very beginning.

and has no legal effect whatsoever. When in a suit such an order is declared to be inoperative and void, the declaration of the Court does not make order void but merely declares or exposes the already existing infirmity in the order. Such an order of dismissal being ineffective from its inception, the civil servant continues in service in spite of the order and it is not necessary that the order should be cancelled or the civil servant should be reinstated. An order cancelling the dismissal or reinstating the civil servant will be entirely superfluous. In *Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh*, , the Supreme Court in pointing out the effect of a decree, which declared an order of dismissal invalid, observed as follows:

"The order of dismissal was declared invalid in a civil suit. The effect of the decree in 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." (p. 1337)

Having regard to these legal principles, the respondent, in spite of the purported order of dismissal passed against him remained in service and was entitled to receive his salary every month. The decree of the High Court in the earlier suit, which declared the invalidity of the order and the respondent's continuity in service, on the ground that the order contravened Section 240 of the Government of India Act, 1935 did not create any right but only declared the already existing right of the respondent. Neither the decree of the High Court nor the order of reinstatement which was later passed, furnished a new cause of action to the respondent for recovery of his salary and the cause of action for the salary accrued every month

Para 2042 (corresponding to F. R. 32) on which reliance is placed by the respondent is worded as follows:

""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"

In our opinion this provision will have no application when the purported order of removal or dismissal contravenes any constitutional limitation and is for that reason inoperative and void. The provision contemplates an order which is within jurisdiction and not void from its inception. The order of dismissal passed against the respondent was found by the High Court to be inoperative and void and to use the language of the Federal Court, the order was merely "a piece of waste paper." In our opinion the order though purporting to be an order of dismissal was not really an order of dismissal falling within para 2042 and had not the effect of suspending the respondent's right to receive his salary and allowances.

We have been referred by the learned counsel for the respondent to two cases of the Madras High Court, viz. *Union of India (UOI) Vs. R. Akbar Sheriff*, and *State of Madras Vs. A.V. Anantharaman*, . In these cases it has been held that even

when an order of dismissal is without jurisdiction, F. R. 52 applies and that the right to recover arrears of salary accrues when the order of dismissal is set aside either in departmental appeal or by civil Court. These cases have been expressly dissented from by the Punjab High Court in *Union of India v. Ramnath* AIR 1966 Punj 500. We have already stated that in our view an order of dismissal which violates a constitutional prohibition like Section 240 of the Government of India Act, 1935 or Article 311 of the Constitution is inoperative and void and does not suspend the right of the civil servant to receive his salary and allowances. We, therefore, respectfully differ from the view adopted by the Madras High Court and accept the view taken by the Punjab High Court that the salary of a civil servant, against whom a void order of dismissal is passed, is not suspended and accrues to him every month. In our opinion the, claim to salary for a period prior to three years of the institution of the suit will be clearly barred by limitation under Article 102 of the Limitation Act, 1908. This view of Article 102 of the Act has also been adopted in the following cases: AIR 1947 FC 23; *Shri Madhav Laxman Vaikunthe Vs. The State of Mysore*, ; *Tilakram Laluwa Vs. State of Madhya Pradesh*, ; *Shamsher Jung v. State of Madhya Pradesh*. AIR 1966 MP 181 ; *State of Bombay Vs. Ganpat Dhondiba Sawant*, , *Shyam Sundar Misra Vs. Municipal Chairman*, . In the instant case, the whole claim relates to a period prior to three years of the date of the suit and the whole of it is barred by time under Article 102.

Next it is contended by the learned counsel for the respondent that, the claim was within time because of acknowledgments. Reference in this connection is made to Exhibits P. 10, P. 11 and P. 15. Exhibit P. 10 is a letter dated 5th April, 1960 which the Personnel Officer, Bilaspur wrote to the Yard Master, Bilaspur. In this letter it is mentioned that the respondent is to be granted the pay and allowances which he would have drawn had he been on duty from 18-7-1946 to 29-1-1959. Exhibit P. 11 is a letter dated 5th September, 1960 from the Assistant Personnel Officer to Senior Accounts Officer, Bilaspur to arrange payment of the bills of the respondent. Exhibit P. 15 is a letter dated 10th March, 1961 from the Personnel Officer, Bilaspur to the Senior Personnel Officer, Garden Reach stating that the arrears of pay and allowances of the respondent for the period from 18-7-1946 to 29-1-1959 amount to Rs. 32,406.07P. and sanction of the General Manager as required by Para 1542-G. I. may be obtained. Reference is also made to a circular Exhibit D. 19 of the Chief Personnel Officer dated 26th November, 1959 that in cases where period of absence of employee is treated by a competent Officer under Para 2044 as period spent on duty, no further sanction as required by para 1542-G. I. is necessary. The argument for the respondent is that the Personnel Officer was competent to acknowledge the claim for arrears and no sanction under para 1542-G. T. was necessary.

Para 1542 of the Railway General Code clearly provides that a claim for arrears which is over three years old and exceeds Rs. 1,000/- has to be referred to the Railway Board and requires the sanction of the President. Claim for a period less than three years or for an amount less than Rs. 1,000/- requires the sanction of

the General Manager or such Officer to whom the power may be delegated by the President. The respondent has not produced any writing signed by the General Manager, the Railway Board or the President in which his claim to arrears of salary which relates to a period of nearly 13 years and amounts to nearly Rs. 39,000/- may have been acknowledged or accepted. Further, no rule or order has been shown which confers authority on the Personnel Officer to acknowledge such a claim. Indeed, the Personnel Officer himself in Exhibit P. 15 realised that sanction of the General Manager was necessary for acceptance of the respondent's claim. The circular Exhibit D-19 has no application to the present case. It relates to cases where a railway servant reinstated under Para 2044 and the reinstatement order treats the period of absence as "the period spent on duty". Para 2044 corresponds to F. R. 54 and is limited to those cases where an order of dismissal or removal is set aside in a departmental appeal and does not apply to the instant case where the dismissal order was declared invalid in a suit *Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh*, at p. 1337. Moreover, no order of any competent authority purporting to have been passed under Para 2044 has been produced in which it may have been held that the period of absence of respondent should be treated as a period spent on duty. The latter Exhibit P. 4 of the District Operating Superintendent only mentions that the respondent's services will be treated as continuous; it does not amount to an order, contemplated by para 2044, to treat the period of absence as a period spent on duty. In our opinion, the respondent has failed to establish that the Personnel Officer, Bilaspur was an agent duly authorised by the appellant to make an effective acknowledgment of the claim u/s 19 of the Limitation Act, 1908. We, therefore, reject the contention that Exhibits P. 10, P. 11 and P. 15 amount to acknowledgments and save limitation. It may also be noticed that the earliest of these documents is dated 5th April, 1960 and, therefore, even if these documents be treated as acknowledgments they are ineffective to revive the claim for the period prior to 5th April, 1957.

It has also been contended on behalf of the appellant that the claim of the respondent for the period prior to 12th September, 1949, the date when the earlier suit was filed was barred under Order 2, Rule 2 of the Code of Civil Procedure. It may be recalled that in the earlier suit the respondent merely claimed a declaration that the order of termination of his services was invalid and void. It was open for the appellant to claim in that suit the arrears which had accrued due till then and we find considerable force in the argument for the appellant that that part of the claim included in the present suit is barred by Order 2, Rule 2. However, as we have held that the entire suit is barred by limitation, nothing further need be said on this point.

It was lastly contended that the respondent was in no case entitled to claim interest as damages on the arrears of salary. This contention is plainly right. It is well settled that in the absence of any usage or contract express or implied or of any provision of law to justify the award of interest, interest by way of damages cannot be awarded: AIR 1938 67 (Privy Council) : *Union of India (UOI) Vs. West*

Punjab Factories Ltd., The respondent, therefore, was in no case entitled to any interest on the arrears of salary. However, as the claim for the entire arrears of salary has been found by us to be time barred, the question whether interest can be awarded does not really arise.

As a result of the above discussion, this appeal is allowed, the judgment and decree of the trial Court are set aside, and the suit is dismissed with costs throughout