Balvantray Ratilal Patel vs The State Of Maharashtra on 12 December, 1967

Equivalent citations: 1968 AIR 800, 1968 SCR (2) 577, AIR 1968 SUPREME COURT 800, 1968 LAB. I. C. 984, 1968 (1) SCWR 964, 1968 MAH LJ 523, 1968 MPLJ 560, 1968 MPLJ 580, 1968 SCD 840, 17 FACLR 445, 1968 2 SCR 577, 1968 2 SCJ 540, (1968) 2 LAB L J 700, 1970 BOM LR 726, 70 BOM L R 726

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Bench: V. Ramaswami, J.C. Shah, Vishishtha Bhargava

PETITIONER:
BALVANTRAY RATILAL PATEL

Vs.

RESPONDENT:
THE STATE OF MAHARASHTRA

DATE OF JUDGMENT:
12/12/1967

BENCH:
RAMASWAMI, V.
BENCH:
RAMASWAMI, V.
SHAH, J.C.
BHARGAVA, VISHISHTHA

CITATION:
1968 AIR 800 1968 SCR (2) 577
CITATOR INFO :
D 1970 SC 140 (5)
R 1970 SC1494 (8)

ACT:
Power to suspend employee during enquiry-Scope of-Whether employee entitled to full remuneration during period of suspension or as determined under Rules 151 and 152, Chapter VIII, Bombay Civil Service Rules.

HEADNOTE:
The appellant was a member of the State Medical Service and as such an employee of the respondent State. On a report made in January 1950 by the Anti-Corruption branch, sanction

was given in May 1950 for his prosecution under s. 161 Indian Penal Code for accepting a bribe and the trial court convicted him of the offence in February 1951. In February 1950, he was suspended by an order of the Civil Surgeon pending further orders and in August 1950,directions were given about the payment of subsistence allowance to the appellant during the period of his suspension. Thereafter a revision application against his conviction was allowed by the High Court and a special leave petition to this Court was rejected. In February 1953 the respondent State Government directed that a departmental enquiry should be held against the appellant, as a result of which an order of dismissal was made against the appellant on February 11, 1960. While the enquiry was going on the appellant gave notice to the respondent under s. 80 of the Civil Procedure Code and then filed a suit against the respondent praying for a declaration that the order of suspension was illegal and inoperative in law and the appellant continued in service as though no order for suspension had been made; he therefore claimed remuneration and allowances with usual increments from the date of his suspension till the date of his reinstatement. A Single Bench of the High Court decreed the suit in the appellant's favour but a Division Bench allowed an appeal and held that the respondent had inherent power to suspend the appellant and to withhold full remuneration for the period of suspension under r. 151 of the Bombay Civil Service Rules.

In the, appeal to this Court it was contended, inter alia, on behalf of the appellant (i) that the power to suspend is not an implied term in an ordinary contract between master and servant and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself; in the absence of any express provision either in the contract of employment or in the Bombay Civil Service Rules, there was no power to suspend a public servant pending inquiry into the allegations of his misconduct; and (ii) as the appellant was suspended pending an inquiry into the charge for the criminal offence alleged to have been committed by him and as the proceedings in connection with that charge ended with the acquittal of the appellant by the High Court on February 15, 1952, the order of suspension must be deemed to have automatically come to an end on that date and the appellant was entitled to full pay from then until February It, 1960 when he was ultimately dismissed.

HELD : dismissing the appeal

(i)The order of the State Government dated February 13, 1950. suspending the appellant pending enquiry into his conduct was valid. [586 B]

L2Sup.C.11/ 8- 6.

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The general principle is that a employer can suspend an employee pending an enquiry into his misconduct and the only

question that can arise in such suspension will relate to payment during the period of such suspension. it is now well-settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the order of suspension has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. [582 D-G; 583 C-D]

It is equally well-settled that an order of interim suspension can be passed against the employee while an enquiry is pending into his conduct even though there is no such term in the contract of appointment or in the rules, but in such a case the employee would be entitled to his remuneration for the period of suspension if there is no statute or rule under which it could be withheld. In this connection it is important to notice the distinction between suspending the contract of service of an officer and sus-pending an officer from performing the duties of his office on the basis that the contract is subsisting. The suspension in the latter sense is always -an implied term in every contract of service. When an officer is suspended in this sense it means that the Government merely issues a direction to the officer that so long as the contract is subsisting and till the time, the officer is legally dismissed he must not do anything in the discharge of the duties of his office. In other words, the employer is regarded as issuing an order to the employee which, because the contract is subsisting, the employee must obey. [582 H; 583 A-C]

The Management of Hotel Imperial, New Delhi v. Hotel Workers' Union, [1960] 1 S.C.R. 476, T. Cajee v. U. Jormanik Siem, [1961] 1 S.C.R. 750; R. P. Kapur v. Union of India, [1964] 5 S.C.R. 431; Hanley v. Pease & Partners, Ltd. [1915] 1 K.B. 698; Wallwork v. Fielding, [1922] 2 K.B. 66; Boston Deep Sea Fishing and Ice Co. v. Ansell, [1888] 39 Ch. D. 339, referred to.

If there is no express term relating to payment during such suspension or if there is no statutory provision in any enactment or rule the employee is entitled to his full remuneration for the period of his interim suspension. [583 G-H]

However, in the present case Rule 151 of the Bombay Civil Service Rules empowered the State Government to withhold pay for the period of interim suspension but the Government servant was entitled under that rule to a subsistence allowance at such rate as the suspending authority may direct but not exceeding one-fourth of his pay. There was no force in the contention that Rule 151 of the Bombay Civil Service Rules applies only to a case where a Government servant is 'suspended by way of penalty and not to a case of interim suspension. [585 D]

R. P. Kapur v. Union of India, 5 S.C.R. 431, relied on.

(ii)The order of suspension dated February 13, 1950 recited that the appellant should be suspended with immediate effect "pending further

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orders". It is clear therefore that the order could not be terminated automatically but only by another order of the Government. Until therefore a further order of the State Government was made terminating the suspension the appellant had no right to be reinstated in service and to the remuneration claimed. [587 H]

Narayan Prasad Rewany v. State of Orissa, A.T.R. 1957 Orissa 51, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 442 of 1965.

Appeal from the judgment and decree dated August 10, 1961 of the Bombay High Court in Appeal No. 23 of 1960. H.R. Gokhate, P. N. Duda, and J. B. Dadachanji, for the appellant.

H. M. Seervai, Advocate-General for the State of Maharashtra, R. Gopalakrishnan and R. N. Sachthey, for the respondent. The Judgment of the Court was delivered by Ramaswami, J. This appeal is brought, by certificate, from judgment of the Bombay High Court dated August 10, 1961 by which the appeal of the respondent against the judgment of S. M. Shah, J. of that High Court was allowed and the suit of the appellant was dismissed.

The appellant was a member of the Bombay Medical Service, Class 11 and as such was an employee of the State of Maharashtra. In 1943, the appellant was posted at the Civil Hospital, Ahmedabad and on February 18, 1950 he was in- charge of the Medico-Legal Section of that hospital. On January 19, 1950, one Nabimahomed complained to Mr. Rathod, Sub-Inspector of Police' Anti-Corruption Branch, Ahmedabad, implicated by the Anti-Corruption Branch of the Police and asking him to consider the representation before giving his sanction for prosecution of the appellant and before making an order of suspension. The Surgeon-General forwarded the report of Sub-Inspector, Mr. Rathod as well as the representation of the appellant to the State Government by his letter dated February 1, 1950. He requested the Government that in the circumstances mentioned in the Sub-Inspector's report orders may be issued for placing the appellant under suspension. His

recommendation was approved by the Minister for Health and by the Chief Minister. By a letter dated February 13, 1950, the Deputy Secretary to the Government informed the Surgeon-General that the appellant should be suspended with immediate effect pending further orders.. The Surgeon-General thereafter issued an order to the Civil Surgeon, Ahmedabad dated February 16, 1950 that the appellant should be placed under suspension pending further orders from the date of the receipt of the memorandum. In pursuance of the directions received by him from the Surgeon-General, the Civil Surgeon, Ahmedabad, issued the following office order and sent it; to the appellant :

> "Under orders from the Surgeon-General, with the Government of Bombay, conveyed in his Memorandum No. S. 97/189/A dated 16th February, 1950, you are informed that you are suspended pending further orders with effect from the afternoon of 18th instant. You should hand over your charge to Mr. S. S. Doctor, B.M.S. Class 11 at this hospital."

On August 21, 1950 the Government directed that the appellant should be allowed subsistence allowance at Rs. 153-5-0 per mensem from the date of his suspension February 19, 1950 to March 31, 1950, at Rs. 158-13-0 per mensem from April 1, 1950 to February 18, 1951 and at Rs. 119-2-0 per mensem from February 19, 1951 onwards. The Government also directed that the appellant should be paid in addition Rs. 35/- per mensem as dearness allowance and Rs. 14/- as house rent allowance during the entire period of suspension. On May 6, 1950 sanction was given for the prosecution of the appellant under s. 161, Indian Penal Code. On February 26, 1951 the appellant was convicted by the First Class City Magistrate at Ahmedabad and sentenced to one day's imprisonment and a fine of Rs. 1000/-. The appellant filed an appeal to the Sessions Court, but his appeal was dismissed. Thereafter, the appellant took the matter in revision to the Bombay High Court. The revision application was allowed and the conviction and sentence passed against the appellant were set aside. On March 14, 1952, the appellant made a representation to the Government praying that he should be reinstated in service.

The Government, however, applied to the High Court for- leave to appeal to this Court against the decision if the High Court and on the said application being rejected, the Government applied to this Court for special leave to appeal. This Court rejected the application on October 13, 1952. On November 27, 1952 the Government issued another order in regard to the payment of subsistence allowance to the appellant. On February 20, 1953 the Government directed that a departmental enquiry should be held against the appellant. The Civil Surgeon, Ahmedabad was appointed Inquiry Officer and he was asked to complete the inquiry within three months and submit his report to the Government through the Surgeon-General. For reasons which are not apparent the departmental inquiry was delayed and ultimately an order of dismissal was made against the appellant on February 11, 1960. Before the conclusion of the departmental inquiry and while that inquiry was going on the appellant gave a notice to the respondent under s. 80 of the Civil Procedure Code. On April 11, 1953 the appellant brought the present suit against the respondent praying for a declaration that the order of suspension was illegal and inoperative in law and the appellant continued in service as though no order for suspension had been passed. The appellant claimed remuneration and allowances with usual increments from the date of his suspension till the date of his reinstatement.

The respondent controverted the allegations made in the plaint and asserted that the suspension of the appellant was not illegal. Shah, J. of the Bombay High Court before whom the suit was tried held that the appellant was entitled to salary and allowances upto the date when he was dismissed i.e., February 11, 1960. He granted to the appellant a declaration that the order of suspension was illegal and inoperative in law and the appellant continued to be on duty till February 11, 1960 as though no order of suspension had been made. He also granted a decree directing the respondent to pay to the appellant Rs. 51,135.28 with interest on Rs. 43,223/- at the rate of 4 per cent p.a. and the cost of the suit. The respondent appealed against the judgment of the trial Judge. The appeal was heard by a Bench consisting of the Chief Justice and Mody, J. The Appellate Bench held that the respondent had inherent power to suspend the appellant and to withhold full remuneration for the period of suspension under Rule 151 of the Bombay Civil Services Rules. The Appellate Bench therefore held that the order of suspension made by the respondent was legally valid as it was in exercise of the inherent power as regards prohibition of work, and in exercise of its powers conferred by the rules so far as the withholding of pay during enquiry against his conduct was concerned. The Appellate Bench also held that the suit was barred under Article 14 of the Schedule to the Indian Limitation Act. For these reasons the Appellate Bench allowed the appeal, set aside the decree passed by the trial Judge and dismissed the suit and ordered the appellant to pay four-fifths of the costs of the respondent through out. The first question to be considered in this appeal is whether Government had the power to suspend the appellant by its order dated February 13, 1950 pending enquiry into his alleged misconduct. It was contended on behalf of the appellant that the power to suspend is not an implied term in an ordinary contract between master and servant and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. It was urged that there was no express provision in the Bombay Civil Services Rules granting a power to the Government to suspend a Government servant pending enquiry into the allegations made against him. The argument was put forward that in the absence of any express provision either in the contract of employment or in any statute or statutory rules governing such employment, there was no power to suspend a public servant pending inquiry into the allegations of his misconduct. We are unable to accept the argument put forward on behalf of the appellant as correct. The general law on the subject of suspension has been laid down by this Court in three cases, viz., The Management of Hotel Imperial, New Delhi v. Hotel Workers' Union,(1) T. Cajee v. U. Jormanik Siem,(2) and R. P. Kapur v. Union of India(3). It is now well-settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract, or of an express, term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the order of suspension has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. This principle of law of master and servant is well-established: (See Hanley v. Pease & Partners, Ltd., (4) Wallwork v. Fielding, (5) and the judgment of Cotton, L. J. in Boston Deep Sea Fishing and Ice Co. v. Ansell) (6). It is equally well-settled that an order of interim suspension can be passed against the employee while an inquiry is pending into his conduct even

though there is no such term in the contract of appointment or in the rules, but in such a case the employee would (1) [1960] 1 S.C.R. 476.

(3) [1964] 5 S.C.R. 431.

(5) [1922] 2 K.B. 66.

(2) [1961] 1 S.C.R. 750.

(4) [1915] 1 K.B. 698.

(6) [1888] 39 Ch. D. 339.

be entitled to his remuneration for the period of suspension if there is no statute or rule under which it could be withheld. In this connection it is important to notice the distinction between suspending the contract of service of an officer and suspending an officer from performing the duties of his office on the basis that the contract is subsisting. The suspension in the latter sense is always an implied term in every contract of service. When an officer is suspended in this sense it means that the Government merely issues a direction to the officer that so long as the contract is subsisting and till the time the officer is legally dismissed he must not do anything in the discharge of the duties of his office. In other words, the employer is regarded as issuing an order to the employee which, because the contract is subsisting, the employee must obey. The general principle therefore is that an employer can sus- pend an employee pending an inquiry into his misconduct and the only question that can arise in such suspension will relate to payment during the period of such suspension. If there is no express term relating to payment during such suspension or if there is no statutory provision in any enactment or rule the employee is entitled to his full remuneration for the period of his interim suspension. On the other hand, if there is a term in this respect in the contract of employment or if there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment will be made in accordance therewith. This principle applies with equal force in a case where the Government is an employer and a public servant is an employee with this qualification that in view of the peculiar structural hierarchy of Government administration, the employer in the case of employment by Government must be held to be the authority which has the power to appoint the public servant concerned. It follows therefore that the authority entitled to appoint the public servant is entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or statutory rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. On general principles therefore the government like any other employer, would have a right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings; this may be called interim suspension. The Government may also proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will be suspension

as a penalty. As we have already pointed out, the question as to what amount should be paid to the public servant during the period of interim suspension or suspension as a punishment will depend upon the provisions Of the statute or statutory rules made in that connection.

On behalf of the respondent Advocate-General of Maharashtra relied upon Rules 151 and 152 of Ch. VIII of the Bombay Civil Service Rules. These rules provide as follows:

> "151. A Government servant under suspension is entitled to the following payments :-
>
> (a) In the case of a military officer who is liable to revert to military duty, to the pay and allowances to which he would have been entitled had he been suspended while in military employment.
>
> (b) In any other case, to a subsistence grant at such rates as the suspending authority may direct, but not exceeding one-

fourth of the pay of the suspended Government servant.

Provided that the suspending authority may direct that the Government servant under suspension shall be granted in addition such compensatory allowances as the Government may sanction by general or special order for issue under this proviso.

Note 1.-The grant of subsistence allowance cannot altogether be withheld."

> "152. When the suspension of a Government servant is held to have been unjustifiable or not wholly justifiable; or when a Government servant who has been dismissed, removed or suspended is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty-
>
> (a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed, removed or suspended and, by an order to be separately recorded any allowance of which he was in receipt prior to his dismissal, removal or suspension; and
>
> (b) if otherwise, such proportion of such pay and allowances as the revising or appellate authority may prescribe.

In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty. In a case falling under clause (b) it will not be treat ed as a period spent on duty unless the revising or appellate authority so direct..... Note 2- Under this rule the revising or appellate authority can convert a period spent under suspension into one of leave admissible under the rules. The period of suspension cannot, however, be converted into leave without pay except in accordance with the conditions in Rule 752. Subsistence allowance paid under this rule should be adjusted or recovered from the Government servant when the period of suspension is-converted into leave with

or without pay."

On behalf of the appellant Mr. Gokhale contended that Rule 151 applies only to a case where a Government servant is suspended by way of penalty and not to a case of interim suspension. We see no warrant for accepting this argument. Suspension is used in Rule 151 in a general sense and Rule 151 applies to all kinds of suspension, whether it is imposed by way of penalty or as an interim measure pending departmental inquiry or a criminal proceeding. We see no reason, either in the context or the language of Rule 151, to place a restricted interpretation upon the meaning of the word "suspension" in that rule. On the contrary, the language of Rules 153 and 156 suggests that the suspension contemplated by these rules includes not only suspension by way of penalty but also interim suspension pending a departmental inquiry or a criminal proceeding. Rules 153 and 156 state as follows "153. Leave may not be granted to a Government servant under suspension."

> "156. A Government servant committed to a prison either for debt or on a criminal charge should be conssidered as under suspension from the date of his arrest and therefore entitled only to the payments specified in Rule 151 until the termination of the proceedings against him when, if he is not removed or dismissed from service, an adjustment of his pay and allowances should be made according to the conditions, and terms prescribed in rule 152 the full amount being given only in the event of the Government servant being considered to be acquitted of \blame, or, if the imprisonment was for debt, of its being proved that the Government servant's liability arose from circumstances beyond his control."

If the word "suspension" in Rules 153 and 156 contemplates suspension pending an inquiry we see no reason why it should be given a different interpretation in Rules 151 and 152. We are accordingly of the opinion that Rule 151 empowers the State Government to withhold pay for the period of interim suspension but the Government servant is entitled under that rule to a subsistence allowance at such rate as the suspending authority may direct but not exceeding one-fourth of his pay. It follows therefore that the order of the State Government dated February 13, 1950 suspending the appellant pending enquiry into his conduct was legally valid and the argument of the appellant on this aspect of the case must be rejected. The view that we have expressed is supported by the ratio of the principle of the decision of this Court in R. P. Kapur v. Union of India(1). The question in that case arose with regard to the interpretation of Fundamental Rule 53 which provided for payment to a Government servant under suspension and which states as follows "53(1). A Government servant under suspension shall be entitled to the following payments, namely :-

> (i) in the case of a Commissioned Officer of the -Indian Medical Department or a Warrant Officer in Civil Employ who is liable to revert to Military duty, the pay and allowances to which he would have been entitled had he been suspended while in military employment;
>
> (ii)in the case of any other Government servant-

(a) a subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn if he had been on leave on half average pay or on half pay and in addition, dearness allowance, if admissible on the basis of such leave salary:

Provided that where the period of suspension exceeds twelve months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first twelve months as follows Fundamental Rule 54 is to the following effect:

"54(1) When a Government servant who has been dismissed, removed, compulsorily retired or suspended is re-instated or would have been re-instated but for his retirement on superannuation while under suspension. the authority competent to order the reinstatement shall consider and make a specific order- (1) [1964] 5 S.C.R. 431.

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty or for the period of suspension ending with the date of his retirement on superannuation as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty. (2) Where the authority mentioned in sub-

rule (1) is of opinion that the Government servant has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government servant shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be.

It was held by the majority decision of this Court that Fundamental Rule 5 3 contemplates all kinds of suspension, whether it is a penalty or as an interim measure pending departmental inquiry or criminal proceeding. It is manifest that Rules 151 and 152 of the Bombay Civil Service Rules are couched in a similar language to that of Fundamental Rules 53 and 54 and it must be held for this reason also that Rules 151 and 152 of the Bombay Civil Service Rules comprise in their scope both kinds of suspension, whether it is a penalty or as an interim measure pending an inquiry into the conduct of the Government servant concerned or criminal proceeding against him.

We proceed to consider the next question arising in this case i.e., whether the order of suspension came to an end on February 15, 1952 when the appellant was acquitted by the High Court in revision and whether in consequence the appellant is entitled to full pay for the period from February 15, 1952 to February 11, 1960 when he was ultimately dismissed. It was contended on behalf of the appellant that he was suspended pending an inquiry into the charge for the criminal offence alleged to have been com- mitted by him and as the proceedings in connection with that charge ended with the acquittal of the appellant by the High Court on February 15, 1952, the order of suspension must be deemed to have automatically come to an end on that date. We see no justification for accepting

this argument. The order of suspension dated February 13, 1950 recites that the appellant should be suspended with immediate effect "pending further orders". It is clear therefore that the order of suspension could not be automatically terminated but it could have only been terminated by another order of the Government. Until therefore a further order of the State Government was made terminating the suspension ,the appellant had no right to be reinstated to service. On behalf ,of the appellant reliance was placed on the decision of the Orissa High Court in Narayan Prasad Rewany v. State of Orissa(1). But the facts of that case are clearly to be distinguished. The order of suspension in that case did not contain the phrase "pending further' orders". Furthermore, the order of suspension was passed under R. 93A of the Orissa Service Code, Vol. 1, under which the Government servant could be suspended during the periods when he was not actually detained in custody or imprisoned. Having, regard to the terms of that rule it was held by the Orissa High Court that the order ceased to be operative as soon as criminal proceedings had terminated. In the present case, however, the appellant was not suspended under any rule similar to rule 93A of the Orissa Service Code, Vol. 1 and the decision of the Orissa High Court has therefore no rele- vance. We are therefore of the opinion that the order of suspension of the appellant made by the State Government on February 13, 1950 did not come to an end on the date of the order of acquittal made by the High Court and Counsel for the appellant is unable to make good his submission on this aspect of the case.

It is not necessary for us to express any opinion as to whether the suit is barred under Article 14 of the Schedule to the Indian Limitation Act as we have held that the claim of the appellant is devoid of merit.

For the reasons already expressed, we hold that the judgment of the Bombay High Court dated August 10, 1961 is correct

-and this appeal must be dismissed. In view of the circumstances of the case we do not propose to make any order as to costs ,of this Court.

R.K.P.S. Appeal dismissed.

(1) A.I.R. 4957 Orissa 51.