S.S. Rathore vs State Of Madhya Pradesh on 6 September, 1989

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Author: Misra Rangnath

Bench: Misra Rangnath, E.S. Venkataramiah, Sabyasachi Mukharji, G.L. Oza, B.C. Ray, K.N. Singh

PETITIONER:
S.S. RATHORE

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT06/09/1989

BENCH:
MISRA RANGNATH
BENCH:
MISRA RANGNATH
VENKATARAMIAH, E.S. (CJ)
MUKHARJI, SABYASACHI (J)
OZA, G.L. (J)
RAY, B.C. (J)
SINGH, K.N. (J)
NATRAJAN, S. (J)

CITATION:
1990 AIR 10 1989 SCR Supl. (1) 43
1989 SCC (4) 582 JT 1989 (3) 530
1989 SCALE (2)510

ACT:
Limitation Act, 1963 --First Schedule--Articles 58 and 113--'When the right to sue or cause of action first accrues'--Interpretation of--Held to be not from the date of original adverse order but from the date when the order on the statutory appeal is made or six months from the date of preferring statutory appeal--Statutory appeals to be dis-

posed of expeditiously--Ordinarily a period of three to six months to be the outer limit.

HEADNOTE:

The plaintiff-appellant was dismissed from service by the Collector on 13.1.1966. His departmental appeal was dismissed by the Divisional Commissioner on 31.8.1966. Thereupon the appellant instituted a suit on 30.1.1969 asking for a declaration that the order of dismissal was inoperative and that he continued to be in service. The suit was dismissed by the trial court and that order was upheld by the appellate courts. In dismissing the suit the courts below accepted the defence plea that it had been filed beyond the period of limitation prescribed therefore under Article 58 of the first Schedule of the Limitation Act . Hence this appeal. This appeal initially came up for hearing before a Division Bench of this Court. At the hearing reliance was placed before a decision of this Court in Sita Ram Goel v. The Municipal Board, Kanpur & Ors., [1959] SCR 1148 in support of the contention that the suit was barred by limitation. The Division Bench took the view that the decision of this Court rendered by five Judge Bench in Sita Ram Goel's aforesaid required reconsideration. This is how the appeal has come up before a Seven Judge Bench. The question that fell for determination by the Court was 'When was the right to sue first accrued' to the appellant i.e. whether from the date when the original adverse order of dismissal was passed against him or when the departmental/statutory appeal was finally disposed of. The appellant's contention is that the original order having merged in the final order whereby his departmental appeal was disposed of, the right to sue accrued from that date and on this reckoning, the suit filed by him was within time.

44

Allowing the appeal and remanding the matter to trial Court, this Court,

HELD: Powers of adjudication ordinarily vested in courts are being exercised under the law by tribunals and other constituted authorities. [51H]

In respect of many disputes the jurisdiction of the court is now barred and there is a vesting of jurisdiction in tribunals and authorities. That being the position, there is no justification for the distinction between courts and tribunals in regard to the principle of merger. [51H; 52A]

It must be held in the instant case, that the order of dismissal made by the Collector did merge into the order of the Divisional Commissioner when the appellant's appeal was dismissed on 31.8.1966. [52B]

The cause of action first arises when the remedies available to the public servant under the relevant service Rules as to redressal are disposed of. [53B]

The cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made. Where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. [53H; 54A]

In every such case until the appeal or representation provided by a law is disposed of, accrual of the cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made. [54D]

Redressal of grievances in the hands of the departmental authorities taken an unduly long time. That is so on account of the fact that no attention is ordinarily bestowed over these matters and they are not considered to be governmental business of substance. This approach has to be deprecated and authorities on whom power is vested to dispose of appeals and revisions under the service Rules must dispose of such matters as expeditiously as possible. [52G-H]

45

Ordinarily, a period of three to six months should be the outer limit. That would discipline the system and keep the public servant away from a protracted period of litigation. [53A]

Sita Ram Goel v. The Municipal Board, Kanpur & Ors., [1959] SCR 1148, overruled.

Madan Gopal Rungta v. Secretary to the Government of Orissa, [1962] Supp. 3 SCR 906, followed.

Pierce Leslie Co. Ltd. v. Violet Ouchterlony Wapshare & Ors., and vice verse, [1969] 3 SCR 203; State of Uttar Pradesh v. Muhammad Nooh, [1958] SCR 595; Collector of Customs, Calcutta v. East India Commercial Co. Ltd., [1963] 2 SCR 563; Somnath Sahu v. State of Orissa & Ors., [1969] 3 SCC 384; C.I.T.v. Amrit Lal Bhagilal & Co., [1959] SCR 713 and Raghuvir Jha v. State of Bihar & Ors., [1986] Suppl. SCC 372, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 207 of 1984.

From the Judgment and Order dated 12.3. 1982 of the Madhya Pradesh High Court in Misc Civil Case No. 539 of 1981.

Ranjit Kumar and Subhash Sharma for the Appellant. Prithvi Raj and S.K. Agnihotri for the Respondent. The Judgment of the Court was delivered by RANGANATH MISRA, J. This appeal is

by special leave and is directed against the judgment of the High Court of Madhya Pradesh by which the High Court has in second appeal upheld the dismissal of the plaintiff's suit on the plea of limitation.

The plaintiff, a Government servant of Madhya Pradesh, was dismissed from service by the Collector on 13th of January, 1966. He preferred an appeal to the Divisional Commissioner and that appeal was dismissed on 31.8.1966. The order of dismissal of the appeal was communicated to the plaintiff on 19.9.1960. The plaintiff gave notice under s.80 of the Code of Civil Procedure on 17.6.1969 and filed his suit on 30th of September, 1969, asking for a declaration that the order of dismissal was inoperative and he continued to be in service. This suit has been dismissed in the Courts below on acceptance of the defence plea that it had not been filed within three years from the date when the cause of action first arose, as required under Article 58 of the First Schedule of the Limitation Act, 1963.

When this appeal came up for hearing before a Division Bench, reliance was placed on the decision of this Court in Sita Ram Goel v. The Municipal Board, Kanpur & Ors., [1959] SCR 1148 in support of the contention that the suit was barred by limitation. The Division Bench extracted a passage from Goel's judgment where it said:

> 'The result is no doubt unfortunate for the appellant, because the trial court found in his favour in regard to his plea of wrongful dismissal. If he had only brought the suit within the period prescribed by section 326 of the Act, he might possibly have got some relief from the Court. He, however, chose to wait till the decision of the State Govern-

ment on his appeal and overstepped the limit of time to his own detriment. We are unable to come to any other conclusion than the one reached above and the appeal must, therefore, stand dismissed; but in the peculiar circum- stances of the case we make no order as to costs', and observed:

> "Such unfortunate results should be avoided, if it is possible to do so. We are of the view that the decision in Sita Ram Goel's case which has been decided by a Bench of five Judges requires to be reconsidered ..... "

(See 1988 Suppl. SCC 522) That is how this appeal has come before the Seven Judge Bench.

The plaintiff's suit was one to obtain a declaration that the order of dismissal was bad and he continued to be in service. To such a suit the Courts below have rightly applied Article 58 of the First Schedule of the Limitation Act. That Article runs thus:

> "58. To obtain any Three When the right to other declaration. years sue first accrues."

Appellant's counsel placed before us the residuary Article 113 and has referred to a few decisions of some High Courts where in a situation as here reliance was placed on that Article. It is unnecessary

to refer to those decisions as on the authority of the judgment of this Court in the case of Pierce Leslie & Co. Ltd. v. Violet Ouchterlony Wapshare & Ors. vice versa, [1969] 3 SCR 203, it must be held that Article 113 of the Act of 1963, corresponding to Article 120 of the old Act, is a general one and would apply to suits to which no other Article in the schedule applies.

The fate of this appeal, therefore, rests upon the finding as to when the right to sue first accrued. All the three Courts have accepted the position that on 1.3.1966 when the order of dismissal was made by the Collector, the right to sue first accrued. Admittedly, the suit was not filed within a period of three years from that date. The appeal was dismissed on 31.8.1966. The sixty days' time spent for complying with the requirement of notice under s. 80 of the Code of Civil Procedure was available to the plaintiff in addition to the period of three years. If the date, therefore, counts, from the date of the appellate order, the suit would be within time.

In Goel's case the question of merger of the order of the lower authority in the order of the higher authority was considered. Adverting to this aspect, Bhagwati, J. who spoke for the Court, said:

> "The initial difficulty in the way of the appellant, however, is that departmen- tal enquiries even though They culminate in decisions on appeals or revision cannot be equated with proceedings before the regular courts of law."

Reliance was placed on the observations of this Court in State Uttar Pradesh v. Mohammad Nooh, [1958] SCR 595, where it has been said:

> .... an order of dismissal passed on a departmental enquiry by an officer in the department and an order passed by another officer next higher in rank dismissing an appeal therefrom and an order rejecting an application for revision by the head of the department can hardly be equated with any propriety with decrees made in a civil suit under the Code of Civil Procedure by the Court of first instance and the decree dismissing the appeal therefrom by an appeal court and the order dismissing the revision petition by a yet higher court, ... because the de- partmental tribunals of the first instance or on appeal or revision are not regular courts manned by persons trained in law although they may have the trapping of the courts of law ,' and the Court proceeded to say:
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> "The analogy of the decisions of the courts of law would, therefore, be hardly available to the appellant."

Alternately, the Court also examined the question as to whether when the appeal of the appellate court affirming the decree of the trial court was made, the original decree had ceased to be operative. Bhagwati, J. quoted with approval another part of the judgment in Moharnmad Nooh's case, where it was said:

> "In the next place, while it is true that a decree of a court of first instance may be said to merge in the decree passed on appeal therefrom or even in the order passed in

> revision, it does so only for certain pur- poses, namely, for the purposes of computing the period of limitation for execution of the decree as in Batuk Nath v. Munni Dei, 41 Indian Appeals 104, or for computing the period of limitation for an application for final decree in a mortgage suit as in Jowad Hussain v. Gendan Singh, 53 Indian Appeals
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> 197. But as pointed out by Sir Lawrence Jen- kins in delivering the judgment of the Privy Council in Juscurn Soid v. Pirthichand Lal, 40 indian Appeals 52, whatever be the theory under other systems of law, under the Indian law and procedure an original decree is not suspended by the presentation of an appeal nor is its operation interrupted where the decree on appeal is merely one of dismissal. There is nothing in the Indian law to warrant the suggestion that the decree or order of the court or tribunal of the first instance be- comes final only on the termination of all .proceedings by way of appeal or revision. The filing of the appeal or revision may put the decree or order in jeopardy but until it is reversed or modified it remains effective.' Bhagwati, J. then said:
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> "The original decree being thus operative what we are really concerned with is the commence- ment of the period of limitation as prescribed in the relevant statute and if the statute prescribes that it commences from the date of the accrual of the cause of action there is no getting behind these words in spite of the apparent inequity of applying the same."

In Mohammad Nooh's case the question for consideration was whether the impugned order in the proceedings under Article 226 of the Constitution before the High Court was an order prior to the Constitution and, therefore, the High Court could not exercise its jurisdiction or was it one pending at the commencement of the Constitution and the revisional order being after the Constitution came into force, the writ petition would be maintainable. The majori- ty, as also Bose, J. who otherwise differed, agreed that jurisdiction under Article 226 of the Constitution was not retrospective. The majority opinion, however, was that it would not be correct to say that the order of dismissal made on April 20, 1948, merged in the appellate order dated May 7, 1949, and both the orders in due course merged in the revisional order of April 22, 1950. The original of dismiss- al was operative on its own strength. Bose, J. however, observed:

> "I see no reason why any narrow or ultra technical restrictions should be placed on them. Justice should, in my opinion, be administered in our Courts in a common-sense liberal way and be broad-based on human values rather than on narrow and restricted consider- ations hedged round with hairsplitting techni- calities ..... The final order was passed after the Constitution on April 22, 1950. It is true that if it had been passed before the Constitution came into force on January 26, 1950, the petitioner would have had no remedy in the Courts. But the Constitution breathed fresh life into this land and conferred pre- cious rights and privileges that were not there before. Why should they be viewed nar- rowly? Why should not that which would have been regarded as still pending for present purposes, if all had been

> done after the Constitution, be construed in any different way when the final act, which is the decisive one for these purposes, was done after it?"

The problem in Mohammad Nooh's case, therefore, was differ- ent from what was for consideration in Goel's case. In Madan Gopal Rungta v. Secretary to the Government of Orissa, [1962] Suppl. 3 SCR 906, a Constitution bench of this Court was examining the correctness of the finding of the High Court that it had no jurisdiction to entertain a petition under Article 226 of the Constitution as the revisional order was that of Government of India located outside its territorial jurisdiction. Rungta's case took into consideration the judgment in Mohammad Nooh's case and stated:

> "We are of opinion that the principle of Mohammad Nooh's case cannot apply in the circumstances of the present case. The ques- tion there was whether the High Court could issue a writ under Art. 226 in respect of a dismissal which was effective from 1948, simply because the revision against the order of dismissal was dismissed by the State Gov- ernment in April, 1950 after the Constitution came into force. It was in these circumstances that this Court held that the dismissal having taken place in 1948 could not be the subject- matter of an application under Art. 226 of the Constitution for that would be giving retro- spective effect to that Article. The argument that the order of dismissal merged in the order passed in appeal therefrom and in the final order of revision was repelled by this Court on two grounds. It was held, firstly, that the principle of merger applicable to decrees of courts would not apply to orders of departmental tribunals, and, secondly, that the original order of dismissal would be operative on its own strength and did not gain greater efficacy by the subsequent order of dismissal of the appeal or revision, and therefore, the order of dismissal having been passed before the Constitution would not be open to attack under Art. 226 of the Constitu- tion. We are of opinion that the facts in Mohd. Nooh's case were of a special kind and the reasoning in that case would not apply to the facts of the present case."

The view expressed by Wanchoo, J. in Rungta's case meets with our approval. In Rungta's case this Court ultimately held that the order of the State Government had merged into the order of the Central Government and the High Court was, therefore, right in its view that it had no jurisdiction.

The next Constitution Bench decision of this Court is that of Collector of Customs, Calcutta v. East India Commer- cial Co. Ltd., [1963] 2 SCR 563 where this Court observed:

> "The question, therefore, turns on whether the order of the original authority becomes merged in the order of the appellate authority even where the appellate authority merely dismisses the appeal without any modification of the order of the original authority. It is obvious that when an appeal is made, the appellate authori- ty can do one of three things, namely, (i) it may reverse the order under appeal, (ii) it may modify that order, and (iii) it may merely dismiss the appeal and thus confirm the order without any modification. It is not disputed that in the first two cases where the order of the original authority is either reversed or modified it is the order of the

> appellate authority which is the operative order and if the High Court has no jurisdiction to issue a writ to the appellate authority it cannot issue a writ to the original authority. The question therefore is whether there is any difference between these two cases and the third case where the appellate authority dismisses the appeal and thus confirms the order of the original authority. It seems to us that on principle it is difficult to draw a distinction between the first two kinds of orders passed by the appellate authority and the third kind of order passed by it. In all these three cases after the appellate authori- ty has disposed of the appeal, the operative order is the order of the appellate authority whether it has reversed the original order or modified it or confirmed it. In law, the appellate order of confirmation is quite as efficacious as an operative order as an appel- late order of reversal or modification."

A 3-Judge Bench decision in the case of Somnath Sahu v. The State of Orissa & Ors., [1969] 3 SCC 384 is an authority in support of the position as accepted by the two Constitu- tion Bench judgments referred to above. There, it was held in the case of a service dispute that the original order merged in the appellate order of the State Government and it is the appellate decision which subsisted and became opera- tive in law and was capable of enforcement. That judgment relied upon another decision of this Court in support of its view being C.I.T .v. Amrit Lal Bhagilal & Co., [1959] SCR

713. The distinction adopted in Mohammad Nooh's case between a court and a tribunal being the appellate or the revisional authority is one without any legal justification. Powers of adjudication ordinarily vested in courts are being exercised under the law by tribunals and other constituted authori- ties. In fact, in respect of many disputes the jurisdiction of the court is now barred and there is a vesting of jurisdiction in tribunals and authorities. That being the position, we see no justification for the distinc- tion between courts and tribunals in regard to the principle of merger. On the authority of the precedents indicated, it must be held that the order of dismissal made by the Collec- tor did merge into the order of the Divisional Commissioner when the appellant's appeal was dismissed on 31.8. 1966. In several States the Conduct Rules for Government servants require the administrative remedies to be exhausted before the disciplinary orders can be challenged in court. Section 20(1) of the Administrative Tribunals Act, 1985 provides:

> "20(1). A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances."

The Rules relating to disciplinary proceedings do pro- vide for an appeal against the orders of punishment imposed on public servants. Some Rules provide even a second appeal or a revision. The purport of s. 20 of the Administrative Tribunals Act is to give effect to the Disciplinary Rules and the exhaustion of the remedies available thereunder is a condition precedent to maintaining of claims under the Administrative Tribunals Act. Administrative Tribunals have been set up for Government servants of the Centre and sever- al States have already set up such Tribunals under the Act for the employees of the respective States. The law is soon going to get crystallised on the line laid down under s. 20 of the Administrative Tribunals Act.

In this background if the original order of punishment is taken as the date when cause of action first accrues for purposes of Article 58 of the Limitation Act, great hardship is bound to result. On one side, the claim would not be maintainable if laid before exhaustion of the remedies; on the other, if the departmental remedy though availed is not finalised within the period of limitation, the cause of action would no more be justiciable having become barred by limitation. Redressal of grievances in the hands of the departmental authorities take an unduly long time. That is so on account of the fact that no attention is ordinarily bestowed over these matters and they are not considered to be governmental business of substance. This approach has to be deprecated and authorities on whom power is vested to dispose of appeals and revisions under the Service Rules must dispose of such matters as expeditiously as possible. Ordinarily, a period of three to six months should be the outer limit. That would discipline the system and keep the public servant away from a protract- ed period of litigation.

We are satisfied that to meet the situation as has arisen here, it would be appropriate to hold that the cause of action first arises when the remedies available to the public servant under the relevant service Rules as to re- dressal are disposed of.

The question for consideration is whether it should be disposal of one appeal or 'the entire hierarchy of reliefs as may have been provided. Statutory guidance is available from the provisions of sub-ss. (2) and (3) of s. 20 of the Administrative Tribunals Act. There, it has been laid down:

> "20(2). For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the rele- vant service rules as to redressal of griev- ances,
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> (a) if a final order has been made by the Government or other authority or offi-

cer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievances; or

(b) where no final order has been made by tee Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an appli- cant by way of submission of a memorial to the President or the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."

We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the

appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle. It is appropriate to notice the provision regarding limitation under s. 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub- section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government serv- ants are concerned, Article' 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be gov- erned by Article 58.

It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was-filed or representation was made, the right to sue shall first accrue.

Submission of just a memorial or representation to the Head of the establishment shall not be taken into considera- tion in the matter of fixing limitation.

In view of what we have said above, Goel's case must be taken to have not been correctly decided. Reliance was placed by appellant's learned counsel on a recent decision of a Two Judge Bench in the case of Raghubir Jha v. State of Bihar & Ors., [1986] Suppl. SCC 372. The conclusion reached is in accord with what we have held but the legal position was not at all referred to or examined. It is unnecessary to make any further reference to that judgment.

Now coming to the facts of the present appeal. Since the claim has been dismissed on the plea of limitation and our conclusion is that the suit was within time, the judg- ments of the trial Court, the First Appellate Court and the High Court are set aside and the matter is remitted to the trial Court for disposal in ac- cordance with law. Too long a period has now intervened between the dismissal of the suit and our order of remand. We, therefore, direct the learned trial Judge to take all effective steps open to him in law to ensure that the suit is disposed of finally before the 15th of December, 1989. Costs shall abide the event.

Y.Lal. Appeal allowed.