Sakal Deep Sahai Srivastava vs Union Of India & Anr on 27 November, 1973

Equivalent citations: 1974 AIR 338, 1974 SCR (2) 485, AIR 1974 SUPREME COURT 338, 1974 (1) SCC 338, 1974 LAB. I. C. 580, 1974 (1) SERVLR 411, 1974 2 SCR 485, 1975 (1) SCJ 367, 1974 (1) LABLJ 270, 28 FACLR 144

Author: M. Hameedullah Beg

Bench: M. Hameedullah Beg, Kuttyil Kurien Mathew

PETITIONER:
SAKAL DEEP SAHAI SRIVASTAVA

Vs.

RESPONDENT:
UNION OF INDIA & ANR.

DATE OF JUDGMENT27/11/1973

BENCH:
BEG, M. HAMEEDULLAH
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MATHEW, KUTTYIL KURIEN

CITATION:
1974 AIR 338 1974 SCR (2) 485
1974 SCC (1) 338
CITATOR INFO :
RF 1977 SC1466 (31)
RF 1980 SC1773 (17)

ACT:
Limitation Act 1908 (9 of 1908) Art. 102-Arrears of salary of public servant Govt. of India Act 1935.

HEADNOTE:
The appellant, who was Assistant Office Superintendent, was promoted as Office Superintendent but immediately thereafter was reverted after issuing a charge sheet but without holding an enquiry. He, however, continued to perform the duties of Office Superintendent. A few months later charges against him were withdrawn with the remark that "no stigma was attached to him". Thereupon the appellant applied to be

reinstated in the post of Office Superintendent and for payment of arrears of his salary. But his reversion order was upheld with the remark that his guilt was established. The appellant retired in 1959 and filed a suit in 1962 claiming arrears of salary and allowances and for a declaration that from the date of reversion to the date of retirement he was a Railway employee on a salary ranging from Rs. 400 to 575 and for certain other benefits.

The trial court, while dismissing the suit in toto, had held (i) that the suit was maintainable but denied any declaration to him and (ii) that the order of demotion passed against him was illegal. The High Court decreed the suit and held that the suit for arrears of salary, except to the extent of Rs. 180/- was barred by art. 102 of the Limitation Act, 1908. The High Court further held that the action against the appellant being penal and violative of the constitutional protection afforded by s. 240(3) of the Government of India Act, 1935 was void and, therefore, could be ignored as non est. [489F-H]

On the question (i) whether art. 102 of the Limitation Act would apply to the case and (ii) whether a declaration was needed for enforcing a claim which fill within time.

Allowing the appeal in part.

HELD : (1) In Shri Madhav Laxman Vaikunthe v. The State of Mysore (1962) 1 SCR 886, which view was reiterated in two later decisions, it was held that art. 102 of the Limitation Act would apply to a case of this kind. Though a good deal can be said in favour of the contention that a claim for arrears of salary is distinguishable from a claim for wages, the question is no longer open for consideration afresh. it is not advisable to review the authorities of this Court after such a lapse of time when, despite the view taken by this Court that article 102 of the Limitation Act, 1908 was applicable to cases of this kind, the Limitation Act of 1963 had been passed repeating the law, contained in article 102 of the Limitation Act, 1908, in identical terms without any modification. The legislature must be presumed to be cognizant of the view of this Court that a claim of the nature, as in the instant case, falls within the purview of article 102 of the Limitation Act, 1908. If Parliament, which is deemed to be aware of the declarations of law by this Court, did not alter the law it must be deemed to have accepted the interpretation of this Court even though the correctness of it may be open to doubt. It was for the legislature to clear these doubts. When the legislature has not done so despite the repeal of the Limitation Act 1908 and the enactment 1 of the Limitation Act, 1963 after the decision of this Court it is inexpedient to reexamine the correctness of the view adopted by this Court in its decisions on the question. [489-FH]

The Punjab Province V. Pandit Tarachand [1947] F.C.R. 89, 93, 108, Jai Chand Sawhney v. Union of India [1969](III) S.C.C: p. 642 and State of Andhra Pradesh v.Kutubuddin,civil

Appeal No. 2289 of 1966 decided on 8-10-69, referred to.
(2)The High Court was right in treating the order of reversion to be void and inoperative or non est. Therefore no declaration was needed for the purpose of enforcing a claim which fell within three years. Consequently only the amount which fell within 3 years of the suit could be decreed in accordance with the statement of the counsel for the respondent. [490F]
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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal 1236 of 1970. Appeal by Special Leave from the Judgment and Decree dated the 6th November, 1968 of the Allahabad High Court in First Appeal No. 361 of 1964.

Yogeshwar Prasad, S. K. Bagga and S. Bagga; for the Appellant.

S. N. Prasad and s. P. Nayar, for the Respondent. The Judgment of the Court was delivered by BEG, J.-The plaintiff appellant's allegations, in the suit which comes up by special leave before us, may be stated as follows The appellant was appointed a Clerk on 29-7-1925 at Gorakhpur in the Accounts Department of what was then the Bengal North Eastern Railway. In January, 1930, he was appointed Assistant Office Superintendent. The Railway was taken over by the State and renamed as Oudh Tirhut Railway (o. T. R.), and, subsequently, it became the North Eastern Railway. In January, 1949, the appellant was appointed officiating Assistant Secretary to the General Manager as a Class II Officer. On 11-5-1949, he was promoted to the post of Office Superintendent. But, on that very date, he was served with a charge-sheet by the Deputy General Manager and called upon to explain, within- 3 days, the use of certain first class passes issued to him. On 14-5-1949, he submitted his explanation and justified the use of these passes by quoting specific rules and similar instances. On 29-6-1949, the General Manager reverted the appellant from the Post of office Superintendent to that of the Assistant Office Superintendent with effect from 1-7-1949 without holding any enquiry at all as required by the Disciplinary and Appeal Rules of the Railway. The appellant's case is that, despite his demotion, he continued to perform the duties of the Office Superintendent presumably because he was efficient. On 27-7-1949, the appellant filed an appeal to the General Manager with the result that, on 29-11-1950, the Deputy General Manager had to withdraw the charges with the remarks: ,,since the appellant had used the passes under a genuine and reasonable belief, no stigma was attached". Thereupon, the appellant applied to the General Manager for formal reinstatement in the post of Office Superintendent and payment of arrears of his salary. Curiously, the General Manager, while awarding an honorarium of Rs. 40/- per month for the additional work of Office Superintendent done by the appellant, practically upheld the reversion order with the remark that the appellant's guilt was established. Against this order the appellant filed an appeal on 30-7-1952 to the Railway Board through the General Manager which was daily forwarded to the Railway Board on 19-8-1952. On 30th October, 1954, the Railway Board sent a letter to the General Manager stating that the question raised by the appellant was not a "live issue",

and, therefore, there was no reason to interfere with the General Manager's action. On 30-9-1959, the appellant retired at the age of 57 despite his claim that he was entitled to continue up to the age of 60 years. The appellant alleged that he received no intimation about the disposal of his appeal by the Railway Board despite the fact that he went on sending reminders. to the Railway Board. On 15-12-1959, the Railway Board had asked for clarification from him. He had also been assured by the then General and Deputy General Managers, in 1961, that his case would' be decided to his satisfaction. Furthermore, he alleged that he wrote to the General Manager on 16-3-1962, and, again on 22-3-1962, to find out the result of his appeal but he received no answer. Therefore, finally he served a notice on 24-9-1962 under Section 80 Civil Procedure Code upon the General Manager, North Eastern Railway, Gorakhpur, and the Union of India. He claimed that Rs. 21,088.04 was due to him as arrears of salary and allowances. He filed his suit on 27-11-62' for a declaration that from 1-7-1949, the date of illegal reversion,. up to 30-9-1959, the date of the appellant's retirement, he was a Rail-way employee on a salary ranging from, Rs. 450/- to Rs. 575/- per month, together with 20% special pay from 10-6-1956 to 30-9-1959 and increased gratuity, and, that, after his retirement, he became entitled to the appropriate pension and gratuity allowance. He had also demanded payment of a sum of Rs. 19,795/- , the details. of which were given in a schedule, after relinquishing Rs. 1,293.04 and interest.

The defendants' version was : The plaintiff, who was an Assistant Office Superintendent from 29-9-1948, was promoted to officiate as. Office Superintendent with effect from 12- 7-1948 in the scale of Rs. 360-500 with a clear stipulation that the promotion was subject to the plaintiff's selection subsequently and would not give him any claim to the post. It was admitted that the plaintiff was appointed to officiate as Assistant Office Superintendent from 21-1-1949, but, it was alleged that, during the period of 18 days for which he held this. post upto 7-2-1949, and, even after that, the plaintiff had illegally utilised certain passes obtained under his signatures. A Selection Board, which met on 12-2-1949, for selection to the post of Office Superintendent, did not find the plaintiff to be the most suitable candidate. Hence, the plaintiff was reverted to the post of Assistant Office Superintendent from 14-2-1949. The plaintiff was again promoted to officiate as Office Superintendent with effect from 11-5-1949, but he was again reverted to his substantive post with effect from 1-7-1949 as a result of the charge sheet against him. The Railway administration had decided to appoint a second Selection Board after canceling the appointment of the first one. The second Selection. Board, which met on 11-11-1949, placed the appellant only second in order of merit so that the appellant had to continue as Assistant Office Superintendent. Hence, no question of his promotion as Office Superintendent arose. Furthermore, it was stated that the post of the Office Superintendent itself was held in abeyance from 1-7-1949, but, another post. of Assistant Office Superintendent was created in its place. It was, therefore, submitted that the plaintiff could never have held a post which was in abeyance. it was asserted that the Plaintiff was given reasonable opportunity for showing cause against the action proposed to be taken against him before his reversion,. and that, after 1-7-1949, as a result of the representation made by the.

plaintiff, the General Manager gave the plaintiff a personal hearing and also appointed a Committee of three officers to examine the whole case of the plaintiff, including alleged withdrawal of the charge against him. The Committee reported to the General Manager that the remark made by the Deputy General Manager that no stigma was attached to the plaintiff was not justified. Nevertheless,

the General Manager had directed payment of Rs. 40/- per month for the period from 1-7-1949 to 31-5-1951 for the extra work done by the plaintiff in addition to his duties as Assistant Office Superintendent. The jurisdiction of the Court to question the reversion from a merely officiating post was challenged. Furthermore, it was alleged that the plaintiff had. knowledge of the dismissal of his appeal as he was working in the office of the General Manager as Assistant Office Superintendent. The plea of limitation was also raised in defence.

The Trial Court, while dismissing the suit in toto had held that the suit was maintainable. This finding was upheld by the High Court on the plaintiff's appeal which was allowed only to the extent that Rs. 180/- was decreed as within time as the suit for the remaining arrears of salary was held barred by Article 102 of Limitation Act of 1908. The Trial Court had denied any declaration to the plaintiff, but the High Court had decreed the suit for declaration in the following terms :

> "The suit, therefore, is also decreed for the declaration that the plaintiff, on being superannuated, became entitled to get gratuity and pension, as admissible under the service rules applicable to the case, on the basis that he retired as Office Superintendent in the grade of Rs. 360/5001-. It would, of course, now be open to the plaintiff to move the Authorities concerned for gratuity and pension in accordance with the declaratory decree passed by this Court in his favour".

As regards the enquiry subsequently held with regard to the plaintiff's grievance, the Trial Court held that it could not take the place of fullfledged enquiry to which the appellant was entitled under section 240 cl. 3 of the Govt. of India Act and the procedural safeguards in a disciplinary action. It, therefore, held that the order of demotion passed against the appellant on 29-6-1949 was illegal. The High Court had, on the plaintiff's appeal, after considering the evidence, held :

> "Therefore, the order of reversion, which had been passed really as a penal measure, cannot be held to be valid. The inevitable consequence of this finding would be that plaintiff was and remained legally entitled to hold the post of office Superintendent and as such to receive the salary etc. payable for that post until he retired. In this view of the matter, the relief for declaration, in the circumstances of the case, was redundant and not an essential prerequisite to his claim for recovery of salary etc. attached to that post, provided, of course, the claim was not barred under article 102 of the Limitation Act".

The Trial Court had held that the order keeping the post of an Office Superintendent in abeyance being administrative in nature could not be questioned in a civil suit. But, the High Court held:

> "The overall position, therefore, appears to be that the order of abeyance was not in reality a bona fide administrative order pure and simple but it was a device to obviate the difficulties which would otherwise have been created by the order of reversion, itself as, in the absence of an order of punishment duly passed, the plaintiff would have a right to revert to the post of the Office Superintendent. In the instant case, from the evidence on record and the relevant circumstances, it clearly appears that

> the alleged order of abeyance of the post of the Office Superintendent had resulted in definite prejudice and loss to the plaintiff. In the circumstances of the case, in our opinion, the suit was legally maintainable and the decision of the Court below to the contrary is erroneous".

it, therefore, appears to us that the High Court had taken in view that the action against the appellant, being penal and violative of the constitutional protection afforded by Section 240(3) Govt. of India Act, was void, and, therefore, could be ignored as "non est". Similarly, the order abolishing the post of Office Superintendent, having been passed with an oblique motive, was not a bonafide order so that. it could be ignored. Even administrative action, to be valid, has to be honest and bonafide. On these findings, the High Court appears to us to have been justified in giving the declaration it did give.

The only question of some difficulty raised before us is whether Article 102 or Article 120 of the Limitation Act of 1908 would apply to the case. After having heard the attractive arguments of Mr. Yogeshwar Prasad, we have no doubt that a good deal can be said in favour of the contention that a claim for arrears of salary is distinguishable: from a claim for wages. But, our difficulty is that the question appears to us to be no longer open for consideration afresh by us, or, at any rate, it is not advisable to review the authorities of this Court, after such a lapse of time when, despite the view taken by this Court that Article 102 of the Limitation Act of 1908 was applicable to such cases, the Limitation Act of 1963 had been passed repeating the law, contained in Articles 102 and 120 of the Limitation Act of 1908, in identical terms without any modification. The Legislature must be presumed to be cognizant of the view of, this Court that a claim of the nature before us, for arrears of salary, falls within the purview of Article 102 of the Limitation Act of 1908. If Parliament, which is deemed to be aware of the declaration of law by this Court, did not alter the law, it must be deemed to have accepted the interpretation of this Court even though the correctness of it may be open to doubt. If doubts had arisen, it was for the Legislature to clear these doubts. When the Legislature has not done so, despite the repeal of the Limitation Act of 1908, and the enactment of the Limitation Act of 1963 after the decisions of this Court, embodying a possible questionable view, we think it is expedient and proper to over-rule the submission made on behalf of the appellant that the correctness of the view adopted by this Court in its decisions on the question so far should be reexamined by a larger Bench.

This Court, in Shri Madhav Laxman Vaikunthe V. The State of Mysore (1), following the case of the Punjab Province V. Pandit Tarachand (2), had held that Article 102 Limitation Act of 1908 will apply to such a case. It reiterated this view in Jai Chand Sawhney V. Union of India(3), and, again in State of Andhra Pradesh V. Kutubuddin(4). Furthermore, the finding that the plaintiff had knowledge of the disposal of his appeal by the Railway Board in 1954 is one of fact. Even if this be a finding which is assailable, we do not consider it to be baseless. We do not, therefore, propose to enter into evidence for the purpose of determining the correctness of this finding for ourselves. If this finding is correct, as we are assuming it to be, a suit filed on 27-11-1962 will be barred by time even if Article 120 of the Limitation Act were to be applied. Six years' period of limitation would have expired long before 1962, even if time were to begin to run, as is submitted on behalf of the appellant, from the time the appellant became aware of the decision of the Railway Board.

The appellant's contention, however, is that, even if suit was barred by time, he would get three years more of arrears of salary as within time if Article 120 (instead of Article

102) Limitation Act of 1908 was applied and each failure to pay the monthly salary due constituted a fresh cause of action. We cannot accept this view as we have, for reasons already given, held that Art. 102 of the Limitation Act, 1908, was correctly applied.

We think that the High Court was right in treating the order of reversion passed against the petitioner to be void and inoperative, or "non est", The result was that no declaration was needed for the purpose of enforcing a claim which fell within 3 years . Consequently, only the amount which fell within three years of the suit filed could be decreed.

So far as the remaining part of the declaration is concerned the amount claimable by reason of it would depend upon the rate at which the plaintiff would have been entitled to draw his salary if he had occupied the post which he should have held when he retired. It has to be, therefore, determined what would be the arrears of pension and gratuity to which the plaintiff would have been entitled if he had held the post of Office Superintendent to which he was entitled. We have been informed by the learned Counsel for the North Eastern Railway that as the appellant was entitled, on the finding of the High Court to hold the post of an Office Superintendent, he could draw a salary in the scale from Rs. 450 to Rs. 575 with effect from 1-7-1959.

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(1) [1962] 1 S.C.R. p. 886 at 894.

(2) [1947] F.C.R. 89, 93, 108.

(3) [1969] (III) S.C.C. p. 642.

(4) Civil Appeal No. 2289 of 1966 decided on 8-10-1969.

Before parting with the case we may observe that on the findings of the High Court about the correctness of which we have no doubt, the appellant was not treated justly. He was even denied promotion due to an order which was not a bonafide one inasmuch as its object was to deprive the appellant of the rights he would have otherwise enjoyed. It is regrettable that a subordinate Govt. servant should be treated in this manner by his superior officers. We hope that, although the claim of the appellant has been found to be barred by limitation, the Union of India will consider the equities of the case and see its way to giving such relief to the appellant as we are precluded under the law from granting to him due to the operation of the law of limitation.

The result is that we modify the decree passed by the High Court to the extent that we hold that the amount which falls due to be paid to the appellant within three years of the filing of the suit (i.e. within the period of limitation) in accordance with the above mentioned statement of the learned Counsel for the North Eastern Railway will be calculated on the correct basis now stated to us by the

learned Counsel. To this extent we allow the appeal, but we dismiss the rest of the appellant's claim. In the circumstances of the case, the parties will bear their own costs throughout. P.B.R. Appeal allowed in part.