

Noor Ali vs Kanpur Omnibus Service Ltd. on 6 May, 1955

Equivalent citations: AIR1955ALL707, AIR 1955 ALLAHABAD 707

JUDGMENT

Mehrotra, J.

1. This is a plaintiff's application in revision against the order of the Small Cause Court, Kanpur, dismissing the plaintiff's suit on the ground that the suit is barred by limitation.

2. The facts briefly are that the plaintiff was an employee of the Kanpur Bus Service Ltd. He was suspended by the management on 3-9-1947 on account of some theft which took place in the premises of the defendant. He was subsequently prosecuted but on 16-7-1948 he was acquitted. On 27-8-1948 after his acquittal he was reinstated by the management. Thereafter the plaintiff brought the present suit for recovery of his arrears during the period of suspension, namely from 3-2-1948 to 26-8-1948. The case set up by the plaintiff was that subsequent to his acquittal he made several applications to the defendant asking for the payment of his wages for the period of suspension but no redress was given to him. Thereafter he took the matter to the Labour Commissioner on 17-8-1948 under Section 15, Payment of Wages Act. Ultimately on 6-12-1948 the Labour Commissioner refused to adjudicate upon the matter and directed the plaintiff to file a suit in a Court of Law. On these facts the present suit was brought and the plaintiff claimed that the cause of action arose to him on 16th July when he was acquitted by the criminal Court and the period from 17-8-1948 to 6-12-1948 during which the matter was prosecuted before the Labour Commissioner should be excluded under Section 14, Limitation Act. The present suit was filed on 26-8-1949.

3. The Small Causes Judge held that the suit was barred by limitation and dismissed it. The Judge, Small Causes further remarked that it has been admitted by the counsel for the parties that the period of limitation for the present claims is one year as provided in Article 7, Limitation Act. In the present petition, however, it has been contended that the present suit is not governed by Article 7, Limitation Act. According to the applicant the Article which is applicable to the present case is Article 102. Article 7 provides for a suit for the wages of a house-hold servant, artisan or labourer not provided for by the schedule in Article 4. The starting point of the Limitation is when the wages accrue due. Article 102 provides for the wages not otherwise expressly provided for by the schedule. The contention of the applicant is that he was employed as a bus driver. He can neither be regarded as a house-hold servant nor an artisan or labourer and consequently Article 7 does not apply to his case. It is contended that an artisan is one who is engaged in some productive work. A bus driver who has only to operate upon a bus and is to observe rules of traffic cannot be regarded as one engaged in productive activities. In Oxford Dictionary the word 'artisan' has been denoted to mean a mechanic also. A driver has not only to operate upon a bus but in the event of breakdown, he has to repair the bus and has to be a mechanic also. In the case --'Sewa Ram v. Lachmi Narayan', AIR 1927 Rang 279 (A), it was held that a motor car driver must possess some skill in manipulating the

different parts of the mechanism of the car and he should therefore be included in the category of artisan. This case was tried to be distinguished by the learned counsel for the applicant upon the ground that it was held in that case that the driver should be treated as a domestic servant. In the case of a driver employed by a private individual, it may be said that he is as much a domestic servant as any other servant in the house. But in the present case the applicant was employed by a limited concern and therefore he cannot be regarded as a domestic servant. It is true that in the Rangoon case the decision was based both on the ground that the driver was included in the word 'artisan' as well as in the words 'domestic servant.' But it cannot be said that it was not decided in that case that the case of a driver is covered by Article 7, Limitation Act. This case has been followed by the Calcutta High Court in the case of -- 'Khagendra Nath Chatterjee v. Kanti Bhushan Banarjee', AIR 1936 Cal 808 (B); and by the Lahore High Court in -- 'Sita Ram v. Jagan Nath Singh', AIR 1936 Lah 661 (C). In the Calcutta case it was held that a driver is an artisan and Article 7 applies to a suit brought by him for the recovery of his wages.

4. I am in agreement with the view expressed by the Calcutta and the Rangoon High Courts referred to above. In the modern age when the industries have considerably advanced any person who participates in industrial activities or is a mechanic can be classed as artisan. The word 'artisan' is not confined to an artist who carries on activities in fine arts only. Besides this in the present case, as has been observed by the Small Causes Judge, the parties had conceded that Article 7 applies to the present case. In view of my decision that Article 7 applies to the present case Article 102 cannot apply as that is a residuary Article.

5. The next contention of the applicant is that the period during which he was bona fide prosecuting his claim before the Labour Commissioner should be excluded in computing his claim. Reliance has been placed on Section 14, Limitation Act which provides that in computing the period of limitation prescribed for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceedings, whether in the Court of the first instance or in the Court of appeal against the defendant shall be excluded where the proceedings are founded upon the same cause of action and prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature is unable to entertain. In the present case an application under Section 15, Payment of Wages Act was made by the plaintiff to the Labour Commissioner for recovery of the arrears of pay. Section 15, Sub-section (2), Payment of Wages Act gives a right to a workman to apply for a direction in cases where contrary to the provisions of the Act any deductions had been made from the wages of an employed person or any payment of wages had been delayed. Reliance has been placed on the provisions of Section 18 which lays down that every authority appointed under Sub-section (1) of Section 15 shall have all the powers of the Civil Court under the Code of Civil Procedure for the purposes of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents and every such authority under Sections 15 and 17 should be deemed to be the Civil Court for the purposes of Section 195, Chap. XXXV, Criminal P. C. It is strongly contended that an authority under this Act has all the trappings of a Court and the proceedings before such an authority is a civil proceeding. Section 18 only gave power of a civil Court to such an authority for the purposes of requiring the attendance of witnesses and for the purposes of Section 195, Criminal P. C., but still such an authority is a persona designate and cannot be regarded as a civil Court within the meaning of Section 14, Limitation Act. The proceedings before such an authority cannot be

regarded as civil proceedings. They are special proceedings under the provisions of an Act for the purposes of giving a speedy relief to a worker, but those proceedings cannot be regarded as Civil proceedings contemplated under Section 14, Limitation Act. The order passed by the learned Commissioner is not before me & it is difficult for me to find out the reasons on which the application was rejected. In the absence of the order of the Labour Commissioner it cannot be held that the application made by the plaintiff applicant before the Labour Commissioner was rejected on account of any defect of jurisdiction and there is therefore no force in this contention of the applicant.

6. The last point urged by him was that the starting point of limitation was the day on which he was acquitted by the criminal Court and reinstated. The words in col. 3 of Article 7, Limitation Act are "when the wages accrue due."

The case of the plaintiff is that his employment continued uninterrupted. The effect of the reinstatement order was that the suspension order was withdrawn and he was accepted to have continued in his employment from the very beginning.

On those facts the right to the wages accrued to him when fell due and his right to sue accrues from the date of suspension, If the case of the plaintiff had been that after his reinstatement a fresh contract of service came into existence and one of the terms of that contract was that the employer had to pay the full salary of the plaintiff for the period of suspension the plaintiff may have been entitled to urge that the cause of action arose on the date when he was re-employed.

But the present suit is not based on any fresh contract. It is based on a ground, as I have already pointed out, that the employment of the plaintiff continued as before. He would be regarded as if he was never dismissed from service and on this allegation the cause of action accrued to the plaintiff on the date when he was suspended. There is therefore no force in this revision and it is rejected. I make no order as to costs.