Shyam Lal vs State Of Uttar Pradesh, Lucknow And Ors. on 23 March, 1966

Equivalent citations: AIR1968ALL139, AIR 1968 ALLAHABAD 139, ILR (1967) 2 ALL 129

JUDGMENT

Sahgal, J.

1. This is a plaintiff's appeal whose claim for a sum of Rs. 31,931.06 P. has been decreed for a sum of Rs. 20,529.06 P, only and has been dismissed for the rest of the amount. But as a counter-claim has been decreed against him in favour of the defendants for a sum of Rs. 20,529.06 P. that is, the amount for which his suit had been decreed, this appeal has been valued at Rs. 31,931.06 P. that is the whole amount for which the original suit was filed. There is a cross objection also to the extent of Rs. 26,239.54 P. praying for the setting aside of the decree passed against the defendants respondents to the extent of Rs. 20,529.06 p. and for interest on the amount for which the counter-claim was decreed by the trial Court amounting to Rs. 5,710.48 P.

2. The plaintiff appellant belonged to the Indian Service of Engineers and was posted in the State of Uttar Pradesh. By an order of the President dated the 17th of April, 1953 he was ordered to be compulsorily retired forthwith. On receiving the communication relating to the order of the retirement of the plaintiff, the Secretary to the Government of Uttar Pradesh directed the Chief Engineer, Irrigation Department under whom the plaintiff appellant was serving to relieve him of his duties immediately and for the communication of the date of relief to the Government and the Accountant General. The plaintiff coming to know about it filed a writ petition in the High Court challenging the order relating to his compulsory retirement.

The writ petition was filed on the 24th of April, 1953 and on that very date an interim stay order was issued by the High Court restraining the State of Uttar Pradesh from removing the plaintiff from his post. This stay order was made absolute on the 8th of May, 1953. The copy of that order is Ext. 24 at page 71 of the printed paper book. Shri Kanhaiya Lal Misra, Advocate General who appeared on behalf of the State of Uttar Pradesh made a statement that the State was willing to pay the plaintiff his salary till the decision of the writ petition but was not prepared to take work from him or to allow him to work as Superintending Engineer, the post at which he was working at the time the order of his compulsory retirement was passed. In the circumstances the Court made it clear that the State was not bound to take work from him or to allow him to work as Superintending Engineer during the pendency of the petition but they will pay him the salary month by month as usual till the decision of the writ petition. The writ petition was. however, dismissed on the 1st of October, 1953.

The plaintiff filed an appeal against the dismissal on the 13th of October, 1953. On that very day a stay order was obtained from the Supreme Court which was made absolute on the 25th of November, 1953. The order is in following terms:

> "On hearing the learned counsel on both sides we make the ad interim stay order absolute and direct that the payments made by the Government during the pendency of the appeal (?) in the High Court will continue to be made pending the disposal of this appeal. The petitioner gives his consent that if the appeal is decided against him the money that will be thus paid to him should be deducted from the Provident Fund amount which is due to him" (Vide Ext. A-3 at page 115-116 of the printed paper book).

In the meantime, however, the plaintiff had to be continued to be paid his salary as Superintending Engineer in terms of the interim order of the High Court well as of the Supreme Court However the Accountant General would not allow any payment to be made unless the appellant held some post A notification had to be issued creating a temporary post of an Officer on Special Duty attached to the office of the Chief Engineer, Irrigation Department to which post the plaintiff was accredited. He accordingly continued to draw pay as an Officer on Special Duty from the 15th of May, 1953 to the 28th of February, 1954. After the Supreme Court decided the case and dismissed the appeal, further payment to the plaintiff for the post of the Officer on Special Duty was withheld. The plaintiff claims that he remained in service up to the 30th of March, 1954 the date of the dismissal of the appeal by the Supreme Court and as such should be allowed his salary at the rate of Rs. 21507- per mensem from the 1st of March, 1954 to the 30th of March, 1954 which comes to a sum of Rs. 2080/-. The General Provident Fund Account of the plaintiff before the period ending 31st March 1954 stood at Rs. 1,09, 623/-.

After the order was passed by the Supreme Court the Government of Uttar Pradesh directed the Accountant General that the order contained in Ext. A-8 at page 132 of the printed paper book already referred to above compulsorily retiring the plaintiff was revived and the plaintiff retired from the 15th of May, 1953 the date on which he ceased to work as Superintending Engineer. It was accordingly ordered that the amount paid to him thereafter at the rate of Rs. 2150/- under orders of the High Court and the Supreme Court be recovered from him. The plaintiff was accordingly not paid the whole amount of Rupees 1,09,623/- which stood in his General Provident Fund Account on the 31st of March, 1954 but after deducting a sum of Rupees 21,881.06 P. he was allowed payment of a sum of Rs. 87,741.94 Paise only. He claimed in his suit the recovery of that amount also.

In all a suit was filed for a sum of Rs. 31,931.06 Paise made up of the following items;

Rs.

1. Balance of the General Provident Fund of the plaintiff 21,881.06

2. Interest on the Provident Fund of Rs t.09,623 at the rate of 4 per cent per annum from the 1st April, 19B4 to the 31st September. 1954 (This is to be allowed under the General Provident Fund (Central Services) Rules) 2,192.00

3.

Interest on Rs. 1.09.623/- at the rate of 6 per cent per annum from 1st October, 1954 to 15th March, 1955 3,014.00 Interest on Rs 21,881.06 P. at 6 per cent per annum from 16th March, 1955 to 25th March. 1957 (16th March appears to be the date when the payment of this sum was withheld, that is, the rest of the amount was paid while 25th March, 1957 seems to be tht date of the notice under section 80 of the Code of 2,650.00 Civil Procedure.)Though there is an unexplainable discrepancy between the date given in item no.3 and this date, this discrepancymay not bematerialfor the purposesof this case. There is also a difference betweenthe parties as to the date when the Provident Fund to the extent of Rs. 87,741.94 was paid.While theplaintiff's caseisthat Itwas paid on the 15th March, 1955, that of the defendants is that it was paid on the 25th November, 1954 (Vide paragraph 11 of the plaint and paragraph 11 of the written statement). There is no specific finding of the trial Court on this point as the view that it took did not necessitate, any such finding.

Salary for the period from 1st March. 1954 to30th March. 1954 2.08000

8. Interestontheabove sum of Rs. 2.080/-

(the salary due but not paid) at therate of 6percentperannum from 17th April, 1956 to 25th March.1957 114.00 Total 31.931.06

3. The plaintiff claimed that the undertaking given by him before the Supreme Court was invalid and could not be enforced as such not binding on him. He claimed to have continued in service upto the 30th of March, 1954. It is in these circumstances that the suit was filed for the amount already referred to above. On the other hand, the case of the defendants, that is, the State of Uttar Pradesh, the Union of India, the Controller and Auditor General of India and the Accountant General of Uttar Pradesh under whose ultimate orders the payment was withheld, was that the services of the plaintiff were terminated on the 15th of May, 1953 for in view of the dismissal of the writ petition by the High Court and subsequently the appeal by the Supreme Court, he must be deemed to have compulsorily retired on that date.

They also pleaded that as a result of the undertaking by the plaintiff before the Supreme Court they were justified in withholding the payment from the Provident Fund of the amount received by him as pay from the 15th of May, 1953 to the 28th of February. 1954. In the alternative their claim was

that they are in any case entitled to that amount and for that amount they filed a counter-claim to the extent of Rs. 20,529 06. They claimed interest on this amount to the extent of Rs 5710,48 P. the total of the counter-claim coming to Rupees 26,239.54 P. They also claimed that there had been an error in calculating the mount due as General Provident Fund inasmuch as a sum of Rs. 1352/- has been wrongly included therein as to which a Statement of Account contained in Ext. C-6 was filed. Both the parties disputed the claim of each other as to interest also.

The learned Civil Judge who tried the case held that the orders of the High Court and the Supreme Court are merely interim orders subject to the final result of the litigation in those Courts. They did not mean that the plaintiff continued in service during the period till the Supreme Court decided the appeal. The result was that after the decision of the writ petition and the dismissal of the appeal, the order of retiring the plaintiff compulsorily, revived and his services must be deemed to have been terminated on the 15th of May, 1953. He was therefore, not entitled to recover any salary after the 15th of May, 1953 and whatever was paid to him thereafter was refundable. He was, however, of opinion that the amount could not be lawfully deducted from the Provident Fund and on that account he passed a decree for the amount recovered from him from his Provident Fund by deducting salary realized by him for the period from the 15th of May, 1953 to the 28th of February, 1954.

On the other hand, he granted a decree in favour of the defendants for that amount. He also held that parties were not entitled to charge any interest, there being no stipulation for doing so. He also held that there was an error of a sum of Rs. 1352/- in the Provident Fund Account being an excess of interest added in previous years and that it should not be allowed to the plaintiff. The result was that the suit was decreed for a sum of Rs. 20,529.06 P. The defendants, however, also were granted a counter-claim against the plaintiff for a sum of Rupees 20,529.06 P. It is against this decree that this appeal has been filed by the plaintiff and a counter claim by the defendants, the claim in appeal having already been referred to above.

4. The first point to be considered is as to whether the plaintiff appellant should be deemed to have been compulsorily retired from the 15th of May, 1953 as claimed by the defendants and held by the trial Court or from the 30th of March, 1954 when the appeal was dismissed by the Supreme Court.

5. The order of compulsory retirement appears to have been passed by the President sometime on or before the 17th if April, 1953. This would appear from the letter of the Secretary to the Government of Uttar Pradesh dated the 23rd April, 1953 to the Chief Engineer, Irrigation Department under whom the plaintiff was working (Vide Ext. A-8). The order was to the effect that he be relieved of his duties immediately. This order may not have been formally communicated to the plaintiff but the fact that he filed a writ petition on the 24th April, 1953 and prayed for a stay of the operation of the order shows that he had come to know of the order. The plaintiff has stated that he received no order of the President of India retiring him compulsorily and says that he was never relieved from Government service till the 30th of March, 1954 on which date on receipt of the news of the dismissal of his appeal by the Supreme Court he sent his charge certificate of relief to the Accountant General of Uttar Pradesh, Allahabad.

From the statement of Ram Prakash, Stenographer to the Chief Engineer, Irrigation Department D.W. 3, it appears that he entered the letter in the peon book on the 23rd of April 1953 informing the plaintiff that he should hand over charge immediately. Nanda Ballabh D.W. 4 was the peon who undertook the duty to serve the order. He did not find the plaintiff at home and he reported it to Ram Prakash, Stenographer to the Chief Engineer, Irrigation Department D.W. 3. Ram Prakash asked him to deliver the letter to any member of the plaintiffs family. So he again proceeded to the residence of the plaintiff. When he knocked at the door the wife and the two sons of the plaintiff came out they took the letter and the peon book inside and after making signature inside the house, plaintiff's wife came out and returned the peon book to him. No doubt, this witness had seen the plaintiff's wife only once and so he could not recognize her with confidence. As to the two sons also he stated that he had not seen them earlier. It cannot, therefore, be said from his statement that the service was necessarily made on the wife or the sons of the plaintiff. But there can be no doubt that it was made on some lady residing in that house.

The plaintiff says that he came to know about the order from somebody at Delhi that the President of India had passed the order dated the 17th of April, 1953 compulsorily retiring him from service which would come into effect from the date of relief from Government service. He filed the writ petition on the 24th of April, 1953 and obtained a stay order against his being removed from his post. In the circumstances, the conclusion is inevitable that even though the order may not have been served on him personally he did come to know about it and it amounts to the same being served on him.

6. The contention on his behalf, however, is that in view of his having obtained a stay order from the High Court and subsequently from the Supreme Court he could not be relieved of his duties and as he could not be so relieved he continued in ervice.

7. We are unable to agree. But for the Interim order passed by the High Court the appellant would have been relieved, at any rate, by 24th April, 1953, the date on which he presented his writ petition. It is well settled that an interim order merges in the final order and does not exist by itself. So the result brought about by an interim order would be non est in the eye of law if the final order grants no relief. The grant of interim relief when the petition was ultimately dismissed could not have the effect of postponing implementation of the order of compulsory retirement. It must in the circumstances take effect as if there was no interim order.

8. The order was passed on the 17th of April, 1954. It was communicated to the Government of Uttar Pradesh and the Secretary to the Government directed the Chief Engineer to relieve the plaintiff of his duties immediately. He could not be relieved because of the stay order that he obtained and when the stay order was vacated he should be deemed to have been relieved on the date on which the order was served on him. In the circumstances, he should be deemed to have been relieved on the 24th of April, 1953 the date on which he moved the said application, for by that time the plaintiff having come to know of the order passed against him must be deemed to have been served. The defendants, however are contended if he is deemed to have been compulsorily retired only from the 15th of May, 1953. This date is to the ad-advantage of the plaintiff and in these circumstances it must be held that he retired on the 15th of May, 1953.

9. On behalf of the plaintiff, however, it has been contended that even the orders of the defendants indicate that he was treated as being in service at least upto the 28th of March, 1954. Ext. 39 printed at page 111 of the paper book, would show that the payment of his pension had been ordered to commence from the 1st of March, 1954. This is a letter addressed to the Treasury Officer sometime in September, 1954. The plaintiff having already received his salary upto the 28th of February, 1954, the order of the payment of pension from the 1st of March. 1954 is understandable. He could not be ordered to be paid the pension for the period from the 15th of May, 1953 to the 28th of February, 1954 when he had already received full pay for that period. The order as to the payment of pension for that period could be passed only after he had refunded the pay that he had received during the period. This document, therefore, cannot be construed as indicating that the Government treated him as being in service till the 28th of February, 1954 Our attention was, however, drawn to document Ext. A-11 at cages 134 to 138 of the printed paper book which is a copy of the annual report of Shri Snyam Lal, the plaintiff for the period from April 1, 1953 to March 31, 1954 to show that even service papers were maintained relating to him uptil 31st of March, 1954 and as such he must be deemed to be in service. We, however, find that the remarks of the Chief Engineer about his work are to the effect that he did little work for the Department during the period under report as for most of the time he was engrossed in the legal action brought by him against Government against his compulsory retirement. During the period no work was taken from him and he was only allowed to draw his full pay in accordance with the direction of the Court. As he was an officer on Special Duty, obviously, this document was maintained because formally he was treated still in service but this treatment of his in service was subject to the ultimate result of the petition filed in the High Court and the appeal filed in the Supreme Court. He was treated in service because he had obtained a stay order against the operation of the order of compulsory retirement. When the case itself was ultimately dismissed the stay order as a result of which he continued to be in service automatically stood vacated and the plaintiff reverted to the position as if the stay order had not been passed and the order of compulsory retirement passed against him and had become effective

10. Attention was then drawn to the orders passed by the High Court (Ext. 30 at page 97 of the printed paper book) on an application on behalf of the State praying for an order directing the plaintiff to refund the salary that was paid to him by the State Government during the pendency of the writ petition, to an application for review and the order passed on that application Vide Ext. 31 at page 100 and an order passed in appeal by a Division Bench against the order dismissing the application of the State Government praying for the refund of the salary, Ext A-5 at page 120 of the printed record. It appears from these orders that the application of the State Govt. praying that the plaintiff be directed to refund the salary that was paid to him by the State Government during pendency of the writ petition was dismissed by Chaturvedi, J An application for review also was dismissed but when the appeal came up for hearing before Hon'ble Upadhya and Srivastava. JJ it was held that it was not maintainable as no order should have been passed on the application for refund This order seems to have been passed as a result of an agreement between the learned counsel for the parties that the application made to the Court by the State for refund of salarv paid to the plaintiff during the pendencv of the writ oetition was misconceived and did not lie. The orders passed on these applications, therefore cannot be a bar to the counterclaim filed by the defendants in the suit

11. Shri BK Dhaon, the learned counsel for the appellant hap relied on a number of authorities shortly to be referred to for the following propositions.

1 If there is an undertaking given to a Court to compensate the defendants in damages, in case the suit was ultimately dismissed the undertaking can be enforced by the Court itself and not by a suit

2. If an injunction is obtained by a party which is ultimately found to be wrongly obtained not by any mistake of law on the part of the Court but because the Court could not decide at that time whether the position taken by the plaintiff was correct or not, then the damages could be claimed only upto Rs. 1000 through Court even without the establishment of malice on the part of the plaintiff.

3. If a suit is filed for recovery of compensation for the injunction having been wrongly obtained the suit has to be based on malice.

This case, according to him, comes in the first category. So far as the period during which the proceedings were pending in the Supreme Court is concerned, an undertaking was given by the plaintiff in the Supreme Court, and that undertaking could be enforced with respect to the period it related only by the Supreme Court in those proceedings and not by any other Court in any other proceedings.

12. As to the claim for the period the proceedings were pending in the High Court according to the argument of Shri B. K. Dhaon, it comes under the third category and to that extent malice must be proved before the suit is decreed. In this case, malice is not only not proved, there is no such allegation.

13. The authorities on which reliance has been placed are: Smith v. Day, (1882) 21 Ch D 421, Imperial Tobacco Co. v. Albert Bonnan, AIR 1928 Cal 1, Rama Row v. Somasunderam Asary, AIR 1928 Mad 679, Bhupendra Nath v. Smt. Trinayani Devi, AIR 1944 Cal 289. Mizaji Lal v. Babu Ram, AIR 1944 All 32 and Premji Damodar v. Govindji & Co., AIR 1947 Sind 169. It is not necessary to quote from these authorities exhaustively the passages to which reference was made, but reference may be made to the cases of AIR 1944 All 32 (Supra) and AIR 1947 Sind 169 (Supra)

14. Referring to the case of AIR 1947 Sind 169 (Supra) in paragraph 11 the following proposition has been laid down:--

> "The position with regard to actions for damages arising out of the institution of civil proceedings stands on a different footing. As a general rule it is not an actionable wrong to institute civil proceedings without reasonable and probable cause, even though malice is provable or, as it is stated in the well known words of Bowen L J. In (Quartz Hill Gold Mining Co. v Eyre) (1883) 11 Q, B D. 674.
>
> the broad canon is true, that in the present day and according to our present law the bringing of an ordinary action however maliciously and however great the want of reasonable and probable cause, will not support a subsequent action for malicious

prosecution."

15. Again in paragraph 23 it is observed:--

> "In AIR 1944 Cal 289 at p. 296 B. K. Mukherjee, J. referring to a similar contention to that put forward by Mr. Kimatrai relating to section 95, said:
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> "It may be true, as Mr. Das contends, that for the purpose of getting a relief under section 95, Civil P.C., no malice or want of reasonable and probable cause need be proved; but we agree with the view taken by the Madras High Court in (1911) ILR 35 Mad 598, Nanjappa v. Ganapathe Goundan that there is no reason for holding that the section in any way interferes with the principles regulating suits for damages for abuse of the processes of the Court. The section allows a limited remedy without proof of malice which is open to a party to avail himself of, if he chooses, but if he is not satisfied with this summary remedy and files a suit for compensation in the regular way, he must prove the essential ingredients of a malicious abuse of the Court's process."

16. in the case of AIR 1944 All 32 (Supra) it is held:--

> "Because the receipt of compensation under section 95, Civil P.C., bars a suit for compensation it does not follow that a suit can be decreed for compensation exceeding the maximum amount mentioned in section 95. In order to succeed it must be proved that there was malice."

17. in our opinion these cases are not applicable to the present case at all. This is not a suit for the enforcement of any undertaking given to the Supreme Court in appeal or to this Court in writ proceedings. The undertaking given by the plaintiff to the Supreme Court was to the effect that if the appeal was decided against him the money that will be paid to him as a result of the order, should be deducted from the Provident Fund amount which is due to him. The defendants do not want to enforce the undertaking. The amount from the Provident Fund has already been deducted by them. The plaintiff filed a suit for its refund. The defendants filed a counter-claim not for the purpose of deducting that amount or enforcing the undertaking given to the Supreme Court but because in view of the ultimate order of the Supreme Court viz. the dismissal of the appeal the amount which they were required to pay as a result of the interim order of the Supreme Court must be refunded to them. Similarly, the claim for the period the writ petition was pending in this Court is based on the ground that the defendants must be paid back the amount they paid during the period on account of the interim order passed in the case by this Court.

18. it is not at all a case of enforcing an undertaking given to a Court nor is it a case for recovery of compensation for the injunction having been wrongly obtained. It is a suit for refund of an amount which had to be paid to the plaintiff as a result of a temporary relief granted to him in the proceedings but which on account of the proceedings being ultimately dismissed must be deemed to have been wrongly paid to the laintiff. It was pointed out on behalf of the tate that such a claim is

based on Section 72 of the Indian Contract Act.

19. Section 72 of the Indian Contract Act provides:

> "A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it."

Section 72 of the Contract Act apparently does not apply. The amount has not been paid by mistake, but it has been paid under the order of the Court which ultimately stands vacated. It has not been paid under coercion either.

20. Reliance was placed on behalf of the respondents on the case of the Sales Tax Officer, Banaras v. Kanhaiya Lal Makund Lal, AIR 1959 SC 135 wherein it has been laid down as follows:--

> "The respondent was assessed for the said amounts under the U.P. Sales Tax Act and paid the same; but these payments were in respect of forward transactions in silver, if the State of U.P. was not entitled to receive the sales tax on these transactions, the provision in that behalf being ultra vires, that could not avail the State and the amounts were paid by the respondent, even though they were not due by contract or otherwise. The respondent committed the mistake in thinking that the monies paid were due when in fact they were not due and that mistake on being established entitled it to recover the same back from the State under Section 72 of the Indian Contract Act. It was, however, contended that the payments having been made in discharge of the liability under the U.P. Sales Tax Act, they were payments of tax and even though the terms of Section 72 of the Indian Contract Act applied to the facts of the present case no monies paid by way of tax could be recovered. We do not see any warrant for this proposition within the terms of Section 72 itself."

In the same paragraph reference is then made to a decision of the Privy Council in the case of Shiba Prasad Singh v. Srish Chandra, AIR 1949 PC 297 to the following effect:--

> "The Privy Council decision in AIR 1949 PC 297 (Supra) has set the whole controversy at rest and if it is once established that the payment, even though it be of a tax, has been made by the party labouring under a mistake of law the party is entitled to recover the same and the party receiving the same is bound to repay or return it."

21. A perusal of this authority would show that it will not be applicable to the present case. In the present case the amount was paid because there was an order of the Court and it was paid under that order which was binding on the defendants. It was not a payment made under any mistaken belief. Section 72 of the Indian Contract Act, therefore, did not apply.

22. it can, however, not be doubted that a result of the writ petition in this Court and the appeal in the Supreme Court the amount that has been paid to the plaintiff by the defendants for the period

beginning May 15, 1953 and ending February 28, 1954 was in fact not due to the plaintiff. It is thus a case of a quasi contract under which the plaintiff was bound to refund the amount unjustly realized by him. The following extracts from Corpus Juris Secundum, Volume 17, 1939 Edition, under the heading 'Constructive or Quasi Contracts' may make the position clear:--

> "Contracts implied in law, or, ... more properly quasi or constructive contracts, are a class of obligations which are imposed or created by law without regard to the assent of the party bound, on the ground that they are dictated by reason and justice, and which are allowed to be enforced by an action ex contractu. They rest solely on a legal fiction and are not contract obligations at all in the true sense, for there is no agreement; but they are clothed with the semblance of contract for the purpose of the remedy and the obligation arises not from consent, as in the case of true contracts, but from the law or natural equity. Such contracts rest on the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another, and on the principle that whatsoever it is certain that a man ought to do, that the law supposes him to have promised to do. So, when the party to be bound is under a legal obligation to perform the duty from which his promise is inferred the law may infer a promise even as against his intention."

23. it would thus appear that though there may not be an express contract between the plaintiff and the defendants to refund in the event of his losing the case the amount which was paid by the defendants to the plaintiff as a result of the order of the Court, in view of the ultimate decision of the Court the amount became refundable and if the plaintiff is allowed to retain that amount it will amount to allowing him to enrich himself unjustly at the expense of the defendants. Therefore, on the principle that a man ought to do what the law supposes him to have promised to do, the plaintiff must refund the amount on the basis of a constructive, implied or quasi contract. There is no reason why this statement of law in Corpus Juris Secundum be not taken to be the state of law in our country also, based as it is on the principles of equity and justice.

24. Shri B.K. Dhaon strenuously relied on the case of Ram Tuhul Singh v. Biseswar Lall Sahoo, (1875) 2 Ind App 131 (PC) But that case has no bearing on the present case at all. That case was based on the well known doctrine of Caveat emptor which principle is applicable to Court sales and it is not necessary to consider that case in detail.

25. Lastly, there remains the question whether any interest should have been allowed to either party. In the absence of any contract expressed or implied or any provision of law to justify the award of interest, interest cannot be allowed by way of damages for wrongful detention of money, vide Bengal Nagpur Railway Co. Ltd., v. Buttanji Ramji, AIR 1938 P.C., 67 followed in Thawardas Pherumal v. Union of India, AIR 1955 SC 468 and in Union of India v. A.L. Rallia Ram, AIR 1963 SC 1685. Also see Union of India v. Watkins Mayor and Co., AIR 1966 SC 275 and the Union of India v. West Punjab Factories Ltd., AIR 1966 SC 395. No interest, therefore, could be awarded to either of the parties. Interest for a period of six months from the date of compulsory retirement of the plaintiff is payable under the Provident Funds Rules and it should be allowed at the rate of 4% per annum at which it is payable under those Rules. But any interest claimed by the defendants or the

plaintiff under any other head cannot be allowed.

26. The claim of the plaintiff for the amount the payment of which had been withheld by the defendants was based on the ground that the undertaking given by him before the Supreme Court was void inasmuch as under the Provident Funds Act no such undertaking could be given. This point has been discussed by the learned trial Judge in his finding on issue No. 2 and his finding to the effect that Section 3(1) of the Provident Funds Act, 1925 gave complete protection during the lifetime of the subscriber against the creditor and also against the Government has not been challenged. The suit was, therefore, rightly decreed. But the counter-claim also has been rightly decreed in view of what has been said above.

27. The defendants though they may be entitled to recover the amounts of pay that they had to give to the plaintiff from the 15th of May, 1953 to the 28th of February, 1954 are in any case liable for the pension of the plaintiff for that period. The learned counsel for the plaintiff pointed out that his pension has been fixed at an amount of over Rs. 800 per mensem. He has, however, filed no affidavit to that effect so that it could be met by the other side. The learned Senior Standing Counsel was not in a position to affirm or deny this assertion. We are, therefore, left with no option but to allow deduction of the pension of the plaintiff for this period in accordance with Ext. 39 at page 115 at the rate of Rs. 525 per mensem. The appeal as also the cross objection is accordingly, dismissed with this modification that the cross-claim of the defendants should stand decreed only for an amount of Rs. 20, 529.06--Rs. 5013 = Rs. 15,516.06 p. instead of Rs. 20,529.06. In the circumstances of the case parties are ordered to bear their own costs in the appeal as well as the cross objection.