Jagdish Prasad Mathur and Others Vs United Provinces Government

First Appeal No. 39 of 1948

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: Nov. 8, 1954

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 22 Rule 11#Government of India Act, 1935 â€" Section 240(3)#Limitation Act, 1908 â€" Article 120, 14

Citation: AIR 1956 All 114

Hon'ble Judges: Mukerji, J; Kidwai, J

Bench: Division Bench

Advocate: B.P. Misra, for the Appellant; B.K. Dhaon, for the Respondent

Final Decision: Dismissed

Judgement

Mukerji, J.
This is an appeal by a plaintiff whose suit was dismissed by the trial Court on two grounds, namely-

(1) on the ground of limitation: and

(2) on the ground that the money which was in the nature, of arrears of salary was not recoverable.

2. The facts giving rise to this litigation briefly stated were these -- the plaintiff, Dwarka Prasad, was appointed a Junior Assistant Registrar, Co-

operative Societies, on 15-10-1921. After serving for some years he got into trouble with the result that he was dismised on 4-9-1939 by an order

of the Registrar.

He preferred an appeal to the Governor, who, by his order of 3-5-1940 set aside the earlier order of dismissal of Dwarka Prasad, the plaintiff.

This is what was said in the order namely-

Babu Dwarka Prasad will now be treated as under suspension with effect from the date of his removal till such time as Government pass orders in

this matter. During the period of his suspension he will draw subsistence allowance equal to 1/6th of his pay.

Subsequent to the aforesaid order other proceedings were taken, and the Governor finally made the order of dismissal of the plaintiff on 23-8-

1941. The plaintiff made certain petitions to the Governor for a reconsideration of his case but these petitions proved abortive and his dismissal

remained effective.

3. On 2-5-1944 the plaintiff gave notice to the Government u/s 80, Criminal P. C., for filing a suit against the Government for wrongful dismissal

and also claiming therein such salaries as would be payable to him in respect of the wrongful dismissal. On 11-7-1944 a petition in "forma

pauperis" was filed by the plaintiff accompanied with the proposed plaint. On 16-12-1944 the Court permitted the plaintiff to sue in "forma

pauperis" and his plaint was registered as such on that date.

4. In his plaint the plaintiff worded his reliefs in these words-

(a) A declaration be given to him that the order of dismissal passed by His Excellency the Governor of the United Provinces was not passed in due

course of law and was wrongful, illegal and "ultra vires" and that notwithstanding the order the plaintiff is still in the service of the Crown as

Inspector Co-operative Societies and entitled to enjoy all other rights and privileges as are incumbent on his office and the plaintiff be reinstated as

Inspector Co-operative Societies with all the rights and privileges incumbent on his office.

(b) that arrears of pay as claimed along with damages as well as future pay at the rate of Rs. 220/- per month till the date of reinstatement be

allowed to him: and

(c) that the plaintiff may be allowed reasonable amount of interest on the arrears of pay as well as costs of the suit. The plaintiff also prayed that the

Court may grant any other relief that it may think appropriate in the circumstances of the case.

5. The plaint is a long document and sets out in great detail the facts and the grounds on which the plaintiff claimed his reliefs. In a written statement

filed on behalf of the United Provinces Government, as it then was, stand was mainly taken on two questions of law-

(1) that the suit was barred by limitation, having been filed more than one year beyond the date of dismissal: and

(2) that the plaintiff was entitled to claim no salary even if the dismissal was void because the plaintiff held his position at the pleasure of the Crown

and he could claim no arrears of salary by a suit from the Crown.

The trial Court as we have already said, dismissed the plaintiff"s suit holding against the plaintiff on both the points of law raised against him.

6. The trial Court framed four issues in all in the suit. The first issue was-

Is the dimissal of the plaintiff illegal and void being in contravention of Sections 240(2)(3) 241 248 266 and 276 Government of India Act, 1935

read with Rule 4 made by U. P. Government, in exercise of the powers conferred by Rule 54 of the Classification, Centrol and Appeal Rules?

The second issue was--

Was the procedure adopted in the enquiry illegal and defective and in contravention of Rule 55 of the Classification, Control and Appeal Rules

and also Sections 2 3 10 13 15 18 and 19 of Public Servants Inquiry Act, 27 of 1850? If so, its effect?

The fourth issue was -- ""Is the suit barred by time?"" The third one was the usual issue which is framed in such suits, namely ""To what relief, if any,

is the plaintiff entitled?"" On the first issue the Court below came to the conclusion that the dismissal of the plaintiff was not illegal or void. The

determination of that issue was had on an interpretation by the Court below of Section 240 and the other relevant sections of the Government of

India Act of 1935.

The exact scope of Section 240, Clause (3) is no more a matter of controversy after the decision of the Privy Council in the case of -- " AIR 1948

121 (Privy Council) : the relevant portion of Section 240(3) is in these words-

No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against "the

action proposed to be taken" in regard to him."" .....

Their Lordships of the Privy Council in "I. M. Lall"s case (A)", referred to above, held that the words of Section 240(3) are mandatory and it was

the opinion of their Lordships that the person against whom any punishment is contemplated must have an opportunity of showing cause against it.

Indeed, their Lordships say that in their opinion no action is proposed with in the meaning of the sub-section until a definite conclusion has been

come to on the charges, and the actual punishment to follow is provisionally determined on.

Prior to that stage, their Lordships say the charges are improved and ""the suggested punishments are merely hypothetical."" It is on that stage being

reached that the statute gives the civil servant the opportunity for which sub-s (3) makes provision. It is on this interpretation of that sub-clause that

their Lordships held the view which now is the settled view of the law that a Government servant must have notice, possibly a second notice of the

action which is proposed to be taken against him.

In this particular case the notice that the plaintiff had was at a stage much earlier than the stage when any question of the action to be taken could

arise. The notice was given to him when the charges against him had yet to be proved. The argument of the learned counsel for the plaintiff-

appellant, therefore, was that the view of the Court below, that the notice which had been given to the plaintiff in the first in- stance calling upon him

to show cause was not a notice that complied with the provisions of Section 240(3) of the Government of India Act of 1935, was correct.

In view of the Privy Council decision already referred to we must hold that the argument of learned Counsel for the plaintiff-appellant was right.

The dismissal of the plaintiff, therefore, as a consequence of the invalid notice and without his having had an opportunity of showing cause against

the proposed action contemplated was invalid in law and could not be deemed to be a proper dismissal.

7. The other question on which the plaintiff failed in Court below was the question of limitation. The trial Court held that Article 14 of the Limitation

Act applied to the case. Article 14 is in these words--

To set aside One The date

any act or Year. of the act

order of an or

officer of order.

Government in

his official

capacity, not

herein

otherwise

expressly

provided for.

8. The suit of the plaintifl was not to set aside any ""act"" or ""order"" of any officer of Government, in his official capacity. The plaintiff"s suit was as

we have pointed out earlier, a suit for declaration to the effect that his order of dismissal was illegal and ''ultra vires''. There is good authority for the

view that Article 14 of the Limitation Act does not apply to those cases where the act or order of any officer is ''ultra vires'' or without jurisdiction

or is otherwise a nullity.

That article applies only to such cases where there is no question of the ''ultra vires'' of the order or of the want of jurisdiction of the person making

the order but where the order is sought to be set aside on some other ground. Mr. Dhaon appearing for the respondent has frankly conceded, and

very properly so, that that is the true scope of Article 14 of the Limitation Act.

In the case of AIR 1943 368 (Oudh) a Bench of the Chief Court of Oudh, as it then was held that where a suit was for a declaration that an order

of dismissal was invalid or ultra vires, Article 120 of the. Limitation Act applied and not Article 14. In the case of the -- '' AIR 1934 108 (Privy

Council) their Lordships pointed out that Article 14 of the Limitation Act applies only when the plaintiff seeks to set aside an act or an order.

In this case their Lordships of the Privy Council applied Article 131. That article was applied because on the facts of the ease before their

Lordships of the Privy Council there was a recurring right. In the case before us there is no such right. Therefore in our view the only pro-per

article that would apply to this case was Article 120 of the Limitation Act, inasmuch as, no specific provision has been made for the type of suit

that the plaintiff has filed by any other article of the Limitation Act.

The view of the learned Judge, therefore, that the suit was barred by Article 14 of the Limitation Act was unsustainable. In our view the suit was

well within time.

9. The other ground on which the plaintifl has been denied relief is the ground that no public servant could claim arrears of salary from the Crown.

After the decision of the -- The State of Bihar Vs. Abdul Majid, , there can be no doubt, now that the rule as obtains in England in regard to the

recovery of salary by a public servant from the Crown by way of a suit is different from the law in regard to this matter in India. The learned Chief

Justice of the Supreme Court who delivered the judgment of the Court has pointed out that-

the rule that a civil servant holds office at the pleasure of the Crown has its origin in the Latin phrase ""durante bene placito"" (""during pleasure"")

meaning that the tenure of office of a civil servant, except wheje it is otherwise provided by statute, can be terminated at any time without cause

assigned. The true scope and effect of this expression is that even if a special contract has been made with civil servant the Crown is not bound

thereby.

In other words, civil servants are liable to dismissal without notice and there is no right of action for wrongful dismissal, that is, that they cannot

claim (damages for premature termination of their services.

The learned Chief Justice further points out that-

this rule of English law has not been fully adopted in Section 240 of the Government of India Act of 1935,

According to the learned Chief Justice

Section 240 places restrictions and limitations on the exercise of that pleasure and those restrictions must be given effect to. They are imperative

and mandatory, It follows, therefore, that whenever there is a breach of restrictions imposed by the Statute by the Government or the Crown the

matter is justiciable and the party aggrieved is entitled to suitable relief at the hands of the Court.

The law therefore is that it is open to a public servant to recover the arrears of his salary by suit. This being the position, the decision of the Court

below on this question also must be set aside and we must hold as we do that the plain-tiff was entitled to recover such arrears of pay or

subsistence allowance or any other remuneration to which under the law he was entitled by suit.

10. We have held that the dismissal of the plaintiff was "ultra vires" and illegal. We would have given the plaintiff the declaration which he sought in

respect of his dismissal but we must notice, at this stage, the fact that the plaintiff died during the pendency of this appeal. He died on 21-11-1951

and this appeal is being continued in this Court by his sons and the widow as his legal representatives.

These legal representatives are not entitled to the declaration to which the plaintiff would have been entitled but nevertheless the legal

representatives are entitled to a finding that the plaintiff"s dismissal on 23-8-1941 was an illegal dismissal. Mr. Dhaon appearing for the respondent

contended that we could give no relief whatsoever to the legal representatives of the plaintiff after his death, inasmuch as, the primary relief and the

other consequential reliefs sought by him were only personally available to the plaintiff and did not enure to the benefit of the legal representatives.

The argument of Mr. Dhaon in its broad as pect is not sound, for we are unable to hold that in no case can the legal representatives be entitled to

the benefit of a declaration which a plaintiff would have got if his rights were in some way dependent on such a declaration. In this case from the

fact of the plaintiff''s unlawful dismissal low certain consequences the result of which would affect the legal representatives in the absence of the

plaintiff.

The plaintiff was alive at the time when his dismissal was made. Indeed, he lived for over ten years after his illegal dismissal. The consequence of

our holding that the dismissal was illegal must be, that the plaintiff would be entitled to the salaries or allowances or such other benefits that accrued

to him under the law. To this money and it must be interpreted in terms of money in many a case, the legal representatives would be entitled to after

his death.

In this view of the matter it is impossible for us to say that with the death of the plaintiff the suit died and the Court could give no relief to the legal

representatives who were before the Court continuing the appeal on behalf of and in place of the plaintiff. We, therefore, hold that although the

legal representatives would not have been entitled to seek a declaration which the plaintiff sought after his death, they are entitled to our finding that

the dismissal of the plaintiff was wrongful and further that they are entitled as a result of such a finding to the consequences that flow from such a

finding.

11. It is not, however, possible for us, even though we have found that the plaintiff''s legal representatives, were entitled to certain sums of money

as a consequence of our holding that the dismissal of the plaintiff was illegal, to come to the exact figure and to pass a decree for that sum in favour

of the appellant, for there is in this case not sufficient material for us to find out what exactly would be the amount to which the plaintiff would be

entitled to from the date of his suspension to the date of his death in the shape of emoluments or allowances or any other sums to which he may

have been entitled under the fundamental rules,

Mr. Dhaon appearing on behalf of the respondent has contended that the plaintiff''s legal representatives could be entitled to nothing. At any rate

they would be entitled to nothing more than the sum of money to which the plaintiff would have been entitled up to the date of the suit. This

contention of Mr. Dhaon is based on a parity of reasoning which he developed on the language of Article 131, Limitation Act. We have been

unable to agree with Mr. Dhaon''s contention for we have seen no logic in his arguments.

The plaintiff in our judgment would be entitled to all such sums as he would be under Rule 53 of the Fundamental Rules framed by the Government

of the United Provinces u/s 241(2)(b) of the Government of India Act of 1935. That rule as we found it is in these words-

A Government servant under suspension is entitled to a subsistence grant of such amount not less than one-fourth of his pay and not more than

one-half of his pay as the suspending authority may direct, provided that in no case shall the amount of the subsistence grant exceed the maximum

limits of leave salary on half average pay or half average substantive pay laid down in Fundamental Rules 87-A (2) and 89 (2).

The learned Counsel for the appellant was unable to say or snow that the suspension of Dwarka Prasad, the plaintiff by the order of the Governor

dated 3-5-1940 was in any way invalid. That being so, the position remains that the plaintiff was properly under suspension from 3-5-1940, and

he was entitled to such emoluments as would be admissible to him under the Fundamental Rules.

12. We, therefore, consider it desirable to send down an issue to the Court below in order to determine the question as to the amount duel to the

plaintiff at the time of his death. The parties would be at liberty to give such evidence as they would wish to, in proof of the following issue-

What is the amount to which Dwarka Pra-sad would have been entitled to under the Fundamental Rules from 11-7-1941 to the date of his death

(we are informed that the death took place on 21-11-1951).

The Court below will return the finding to this Court within three months from today. The parties will have the usual ten days" time to file such

objections to the finding that they may wish to.