State of U.P. Though District Magistrate, Basti and Another - Appellants @HASH Jhinkan Chaudhary and Another

Court: ALLAHABAD HIGH COURT

Date of Decision: May 20, 2016

Acts Referred: Civil Procedure Code, 1908 (CPC) - Section 100

Citation: (2016) 168 AIC 938 : (2016) 6 AllWC 5619 : (2016) 119 ALR 151

Hon'ble Judges: Pramod Kumar Srivastava, J.

Bench: Single Bench

Advocate: S.C. Srivastava, S.C, for the Appellant; Vinod Kumar Dwivedi, Advocate, for the Respondent

Final Decision: Allowed

Judgement

Pramod Kumar Srivastava, J. - This appeal has been preferred against the judgment dated 17.7.1999 passed by Ist Additional District

Judge, Basti in Civil Appeal no. 17 of 1994 (Jhinkan Choudhary v. Indira Gandhi Intermediate College, Kaptanganj & others).

2. In original suit no. 327 of 1983 (Jhinkan Choudhary v. Indira Gandhi Intermediate College, Kaptanganj & others.). The plaint case in

the brief was that plaintiff was appointed on 08.09.1973 as Assistant Teacher in defendant no.-1 College. He was never terminated from service

but since year 1977, the defendant no.-1 through Manager and Principal had stopped salary of the plaintiff without sanction of defendant no.-2

District Inspector of Schools. The cause of action for the suit arose to plaintiff when defendants denied him salary since 1.7.1977, therefore he filed

suit for relief of declaration that he is legally appointed Assistant Teacher of defendant no.-1 School and is entitled to be paid salary every month till

his services are not terminated in accordance with law. During pendency of suit, plaint was amended for the relief that defendants be directed to

pay the entire salary to plaintiff. This original suit was instituted on 11.8.1983.

3. Defendants had filed written statement in original suit by which they denied plaint case and further pleaded that plaintiff had never been

appointed on 8.9.1973 as teacher and no approval of such appointment was given by defendant no.-2 District Inspector of School (DIOS). The

plaintiff has any how obtained any alleged appointment letter which is forged and fictitious document without any sanction of law. Defendant no.-2

is not responsible for the acts of Manager of the school or the plaintiff. The list of teachers working in relevant year 1978 is in the office of

defendant no.-2 which was sent by Principal and Manager of the institution on 20.5.1978 and that list does not find name of plaintiff working as

teacher in said school. The plaint case is based on incorrect facts. No cause of action arose to plaintiff and suit is also barred by limitation on

admitted facts of the plaint, which is liable to be dismissed.

4. After affording opportunity of hearing to the parties, the Court of 4th Additional Munsif, Basti had dismissed the suit by its judgment dated

8.4.1994, in which finding on suit being time barred was also given. The trial court had also held that the alleged appointment letter of plaintiff is not

proved and the appointment of plaintiff for year 1973-74 and year 1974-75 was purely temporary without any lien which was never extended. On

these grounds also, suit was dismissed.

5. Against the judgment of trial court, Civil Appeal no. 17 of 1994 (Jhinkan Choudhary v. Indira Gandhi Intermediate College,

Kaptanganj & others.) was preferred which was heard and allowed by the judgment dated 17.7.1999 of Ist Additional District Judge, Basti. In

this judgment, the first appellate court had held that there is no evidence that plaintiff was ever terminated or removed from the service, or he had

resigned from his service. First appellate court had also held that suit is not time barred because it is mentioned in the plaint that cause of action

arose on 30.07.1982. With these findings, first appellate court had allowed the appeal for reliefs sought in plaint.

6. Against the said judgment of lower appellate court, present Second Appeal has been preferred by defendants no. 1 and 2 of the original suit.

7. This appeal was admitted by this Court on following substantial question of law:

Whether on the facts and circumstances the suit was barred by limitation?

8. Learned counsel for the appellant contended that cause of action for the suit arose to plaintiff on 1.7.1977, the limitation for such suit is only

three years, but the suit was instituted on 11.8.1983 that is after more than 6 years of alleged arising of cause of action; but these facts were not

properly appreciated by first appellate court, so original suit should be treated as time barred.

9. Submissions of counsel for the appellant were refuted by learned counsel for the respondent who contended that first appellate court had

properly appreciated the cause of action, the legal position and the error committed by the trial court, and thereafter passed the impugned

judgment. He contended that the cause of action arose in year 1982 and suit was instituted in year 1983; therefore the suit was not time barred

because limitation in this matter is for 3 years. Therefore the appeal should be dismissed.

10. The cause of action for the original suit which was mentioned in paragraph-11 of the plaint at the time of institution on 11.08.1983, in

unamended form is reproduced as under:

That the cause of action arose on 1.7.77 and on everyday in Kaptanganj, Tappa Nawai, Tahsil Harryia Distt. Basti when plaintiff was denied his

salary and other benefits illegally under the territorial jurisdiction of this court.

11. Then this paragraph of plaint relating to cause of action was amended in year 1984 (by order dated 15.10.1984) and words ""and on 30.7.82

the date of refusal to pay the salary and other emoluments of service"" were inserted in plaint by way of amendment.

12. Thus after amendment the paragraph-11 of plaint relating to cause of action had become as under:

That the cause of action arose on 1.7.77 and on 30.7.82 the date of refusal to pay the salary and other emoluments of service and on everyday in

Kaptanganj, Tappa Nawai, Tahsil Harryia Distt. Basti when plaintiff was denied his salary and other benefits illegally under the territorial

jurisdiction of this court.

13. The trial court had framed ten issues on basis of pleadings of the parties, in which issue no.-10 was as to ""whether the suit is time barred; and

if so, its effect".

14. Te trial court had appreciated the facts of the case and then found that it is important to determine that when cause of action first arose to

plaintiff. After this trial court had found that cause of action first arose to plaintiff on 01.07.1977, but the plaintiff had not filed suit within three

years" of period of limitation, therefore it is barred by limitation. The judgment of trial court, on this point was based on proper appreciation and

discussion of law and case laws, which is found correct.

15. But the first appellate Court had held that is not convinced with this findings of trial court, because in plaint the plaintiff has also mentioned the

later date of cause of action, which is 30.7.1982, the date of the refusal to pay the salary and other emoluments of service and also when he was

denied his salary and other benefits. The lower appellate Court had found that cause of action of ""30.7.82" has been added later on, but held that

in such type of causes the cause of action should not be restricted on a particular date, but the cause of action becomes recurring having regard to

the provisions of section-22 of the Limitation Act. First appellate Court had held that even after 1.7.1977 the cause of action still arise on every

day and as such it was not default on the part of the plaintiff but it was default on the part of the defendant to pay the salary to the plaintiff and as

such the case of the plaintiff is covered under section-22 of the Limitation Act and he will get the benefit of the same and his suit shall be treated

within time.

16. The section 22 of the Limitation Act is as under:

22. Effect of substituting or adding new plaintiff or defendant. - Where, after the institution of a suit, a new plaintiff or defendant is substituted or

added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest

during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

17. In the present matter the original suit was instituted by sole plaintiff against two defendants (the College and the District Inspector of Schools)

in year 1977, thereafter the third defendant (the State of U.P.) was made party in the suit. The cause of action for the suit arose to plaintiff-

respondent was in fact never changed, because the defendant no.-2, the District Inspector of schools was already representing the defendant no.-3

from the very beginning, had already filed written-statement with pleading that plaintiff was never appointed as teacher, and his alleged appointment

letter was forged document having no legal sanctity. In plaint it was already mentioned that cause of action for the suit arose to plaintiff ""when

plaintiff was denied his salary and other benefits" from year 1977. There appears no connection of section-22 of Limitation Act with the cause of

action of this suit. It is explicitly clear that the lower appellate Court had neither considered the pleading of the plaint nor the findings of the trial

Court. The lower appellate Court had not properly understood the provisions of Limitation Act yet it gave an erroneous and infirm finding which is

totally perverse.

18. The relevant provisions of Limitation Act, 1963 are sections 3 and 9, which are as under:

3. Dismissal of suits, etc., instituted, etc., after period of limitation. - Subject to the provisions contained in Sections 4 to 25 (inclusive), every suit

instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed,

although limitation has not been set up as a defence.

Explanation. - A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer; in the case of a pauper, when his application

for leave to sue as a pauper is made; and, in the case of a claim against a company which is being wound up by the Court, when the claimant first

sends in his claim to the official liquidator.

9. Continuous running of time. - Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application

stop it:

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a

suit to recover the debt shall be suspended while the administration continues.

19. The admitted case of the plaintiff-respondent in plaint was that the cause of action arose on 10.7.1977 and on every day when plaintiff was

denied his salary and other benefits. There was no change in that cause of action which arose to plaintiff at the time of institution of the original suit.

The otherwise finding of the lower appellate Court is against the provisions of law and is baseless.

20. In Popat and Kotech Property v. State Bank of India Staff Association(2005) 7 SCC 510, the Hon"ble Apex Court had held as under:-

7. The period of limitation is founded on public policy, its aim being to secure the quiet of the community, to suppress fraud and perjury, to

quicken writ diligence and to prevent oppression. The statute i.e. the Limitation Act is founded on the most salutary principle of general and public

policy and incorporates a principle of great benefit to the community. It has, with great propriety, been termed a statute of repose, peace and

justice. The statute bar discourages litigation by burying in one common receptacle all the accumulations of past times which are unexplained and

have not from lapse of time become inexplicable. - - -

9. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their

remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a

lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux

of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So, a lifespan must be fixed

for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is

thus founded on public policy. It is enshrined in the maxim interest reipublicae ut sit finis litium (it is general welfare that a period be put to litigation).

The idea is that every legal remedy must be kept alive for legislatively fixed period of time. - - -

21. In K.M. Sharma v. ITO, (2002) 4 SCC 339 the Hon"ble Apex Court had held as under:-

Law of limitation is intended to give certainty and finality to legal proceedings and to avoid exposure to risk of litigation to a litigant for an indefinite

period on future unforeseen events. Proceedings, which have attained finality under existing law due to bar of limitation cannot be held to be open

for revival unless the amended provision is clearly given retrospective operation so as to allow upsetting of proceedings, which had already been

concluded and attained finality.

22. This legal position is explicitly clear that the principles underlying provisions of limitation are based on public policy aiming that justice should be

furnished to all the parties and hardship or injustice may be relevant consideration in applying the discretion for condoning the delay. But such

hardships of both the parties should be considered. In condoning the delay in filing suit beyond period of limitation as provided by the statute, there

must be cogent and satisfactory reasons. Such reasons are lacking in present matter. It is admitted legal position that an Asst. Teacher cannot get

appointment without the approval of district Inspector of schools (defendant no.-2 in present suit), who had denied any appointment of plaintiff

respondent, and is specifically pleaded that his appointment letter is a forged document. No approval of defendant no.-2 was found by trial Court

in this case, and those findings were not specifically reversed by the lower appellate Court, and after referring a few letters issued after the cause of

action, the first appellate court had erroneously held that cause of action arose as mentioned in amended form of paragraph-11 of the plaint as

above.

23. There is period prescribed for initiation of every legal proceedings in Limitation Act, and such period may be extended in accordance with

mandatory provisions of the Act. The principles underlying the provisions the Act, which are based on public policy along with hardship and

injustice to other party should also be considered. In the present matter, every consideration leads to inference against plaintiff-respondent. In

recognised educational institutions the salary is paid by the Government from public exchequer, which is public money earned by taxpayers of the

country. The disbursement of such money without appropriate reason cannot be justified. This is the hardship to appellant State, who is custodian

of this money. Illegal disbursement of such money, against the provisions of law, is hardship to the appellant State and the public, which cannot be

permitted.

24. The limitation for original suit was three years from the date of cause of action arose. Admittedly, as mentioned in plaint, the cause of action for

the first time arose on 01.07.1977. So the limitation of three years for instituting the suit, ended on 01.07.1980. But it was filed on 11.08.1983. So

it is held that suit was instituted much beyond period of limitation, and there appears no justification. The finding of trial court in this regard is found

correct, which is confirmed.

25. In view of the above, the substantial question of law as above is decided in affirmative, in favour of appellants and against the plaintiff-

respondent. Accordingly, this 2nd appeal is allowed, the impugned judgment dated 17.07.1999 of the first appellate Court is set aside, the

judgment of trial Court is confirmed, and the first appeal is dismissed.

26. Interim order, if any, is hereby vacated.