

The State of Andhra Pradesh Vs. Shaik Sabhanuddin Allahuddin

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Court : Andhra Pradesh

Decided On : Feb-06-1964

Reported in : AIR1965AP188; (1965)IILLJ356AP

Judge : Narasimham, J.

Acts : Limitation Act, 1908 - Schedule - Articles 14, 102 and 120 and 311(2)

Appeal No. : C.C.C. Appeal Nos. 63 of 1961 and 24 of 1962

Appellant : The State of Andhra Pradesh

Respondent : Shaik Sabhanuddin Allahuddin

Advocate for Def. : Abdul Khair Siddiqui and ;R. Raghavan, Advs.

Advocate for Pet/Ap. : Govt. Pleader and ;A. Gangadhara Rao Adv.

Judgement :

(1) These two appeals arise out of the judgment of the Third Additional Judge, City Civil Court, Hyderabad, at Secunderabad, in O. S. No. 55 of 1960. The plaintiff in this suit was a Sub-Inspector, who served in the former Government of Hyderabad. He was appointed on 1-8-1947. In the course of his service, he was attached to the Railway Police. There was a departmental enquiry against him on charges of alleged misconduct in the discharge of his official duties, and he was discharged from service by an order of the Deputy Inspector General of Police, C.

I. D. and Railways dated 7-8-1950. The Government rejected his appeal against the order discharging him. Thereafter he instituted a suit on 31-1-1955 for a declaration that the order of suspension dated 30-1-1950 and the order of discharge dated 7-8-1950 were null and void and claiming consequential reliefs of reinstatement, damages and arrears of salary against the Government. He filed the suit in forms pauperis claiming Rs. 10,000/- as and for damages for his mental worry and the balance as arrears of salary from the date of his suspension. The suit was dismissed under its old No. O. S. 37 of 1995 in the first instance on 18-4-1956. He applied against the said judgment dismissing his suit, and a Division Bench of this Court allowed his appeal, A. S. 65 of 1958, finding that the officer who passed the order of discharge had not given him the notice contemplated under Art. 311(2) of the Constitution and so the order of discharge could not be sustained. So, the learned Judges remanded the suit for consideration of the other issues. The learned advocate for the plaintiff would appear to have filed a memo before the trial Court on 10-12-1960 stating that in view of the judgment of the Division Bench of this Court only issues 7 and 8 fell to be considered. These issues related to the damages claimed by the plaintiff, arrears of salary and other incidental reliefs. No fresh evidence was let in after remand. Arguments were addressed by the counsel on either side. An additional issue was, however, settled at the instance of the learned Government Pleader whether the suit was barred by time. The learned trial Judge held that the order discharging the appellant was null and void and inoperative, that the suit was governed by Art. 120 of the Limitation act and was, therefore, in time, and decreed the suit for arrears of salary from the date of suspension upto the date of filing the suit. He also directed reinstatement of the plaintiff in service. The damages prayed for were rejected. The suit being in forma pauperis, the trial Court decreed that the plaintiff and the defendant shall pay the Court-fee in equal moieties. Against the said judgment and decree of the trial Court, the Government of Andhra Pradesh, defendant in the suit, being the successor Government, has preferred C. C. C. A. 63 of 1961. The plaintiff preferred an appeal, C. C. C. A. 24 of 1962 claiming that he should have been granted salary till actual reinstatement and seniority and other consequential benefits.

(2) In support of the appeal preferred by the Government of Andhra Pradesh, the learned Government Pleader has raised two points : Firstly, that Article 14 of the Limitation Act governs the suit and not Article 120 as found by the learned trial Judge and so the suit is barred by time. Secondly, that the plaintiff would be entitled to arrears of salary for only three years prior to suit under Art. 102 of the Indian Limitation Act, and that the judgment of the trial Court awarding him arrears of salary from the date of his suspension i.e. 30-1-1950 till the date of his filling the suit i.e. 31-1-1955 is wrong.

(3) Taking the first point, it is appropriate that I peruse Art. 14 of the Indian Limitation Act, which is as follows : -

Description of suit. Period of limitation. Time from which period begin to run.

To set aside any act or order of

an Officer of Government in his One year. The date of the act or order .

official capacity not herein otherwise

expressly _____ provided
for.-----

The learned Government Pleader has addressed arguments emphasizing the words in the first column as not restricting the application of the Article to acts or orders other than void acts or orders. He has also argued that assuming that the Article does not apply to void acts or orders of the officer of the Government, the order in the instant case discharging the plaintiff would only be irregular for non-compliance with the issue of the notice contemplated under Art. 311(2) of the Constitution and not void. It does not, however, appear that the points of view presented by the learned Government Pleader are consistent with the trend of decisions which cover both the aspects. There are any number of judicial pronouncements to the effect that Article does not apply to a case where the order of officer is null and void. I shall be presently referring to the decisions on the

point. If so, the construction of the words in column No. 1 as embracing void orders of the officer of the Government as well cannot be supported. The second aspects of the case presented by the learned Government pleader that non-compliance in the instant case would only make the order irregular and not void runs counter to the trend of decisions.

(4) High Commissioner for India v. I. M. Lall, AIR 1948 PC 121 was a case of removal of a member of the Indian Civil Service without following the procedure indicated in Sec. 240(3) of the Government of India Act of 1935. Section 240(3) of the Government of India act of 1935 provided in terms that no member of a Civil Service of the Crown in India or who holds any civil post under the Crown in India 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. This provision enacts a guarantee in terms enacted under Art. 311(2) of the Constitution of India . The provisions being in pari materia, the decision is very much in point. The Judicial Committee held that that was mandatory requirement and failure to comply therewith made the order removing the officer concerned 'void and inoperative'. The Supreme Court has discussed about this provision in the go of India act, 1935 and in the Constitution enacted thereafter, in Khem Chand v. Union of India, : (1959)ILLJ167SC and observed that it was a safeguard, which was a protection under the Government of India Act of 1935 as well. In Union of India v. Jeewan Ram, : AIR 1958 SC905 , the Supreme Court considered the case of removal of a booking clerk in the Railway at Ajmer without complying with Sec. 240(3) of the Government of India Act of 1935. The learned Judges affirmed their observations in : (1959)ILLJ167SC and held that as the impugned order clearly contravened the provisions of Sec. 240(3) of the Government of India Act, 1935, it was 'illegal and ineffective'.

(5) Lady Dinbai Dinshaw Petit v. Dominion of India, : AIR1951 Bom72 is a Division Bench case which contains useful discussion with regard to the applicability of art. 14 of the Limitation Act. At page 78, Chagla C. J. , after setting out the terms of the Article observed that obviously the Article applied only to those acts or orders which were valid until they were set aside. He expressed the view that if an order was bad from its inception, Art. 14 would not apply to such an order because it

would be unnecessary for the plaintiff to get the order set aside. The discussion is as follows :

'The question, therefore, we have to consider in this appeal is whether the two orders which the plaintiffs challenge, if their challenge is successful, are valid till they are set aside or they were invalid from their very inception. If the Collector had the power or the jurisdiction to make these orders and he made them in the absence of any formality required by law or he made them irregularly, it may be said that those orders would not be bad from their inception, but they would be irregular orders which would have to be challenged in a Court of law and set aside, and till set aside they would continue to be good and binding orders. On the other hand, if the orders were made by the Collector without jurisdiction or in the absence of any power given to him under the law, then the orders would be invalid from their very inception. The distinction is the well-known distinction between the absence of jurisdiction and the irregular exercise of jurisdiction.'

That was a case of requisition and acquisition of the plaintiff's property under the Defence of India Rules.

(6) Jagdish Prasad Mathur v. United Provinces Govt. , 0044/1956 : AIR1956 All114 deals with a Junior Assistant Registrar of Co-operative Societies who was dismissed on 4-9-1938 by the Registrar without complying with Sec. 240(3) of the Government of India Act, 1935. The dismissed official filed a suit for a declaration that his dismissal was wrongful, illegal and ultra vires and for arrears of pay. The learned Judges followed the Privy Council's ruling in AIR 1948 PC 121 and held that the dismissal was wrongful and invalid and further held that Art. 14 of the Limitation Act did not apply to cases where the act or order of an officer of the Government is ultra vires or without jurisdiction or is otherwise a nullity. Ranjit Kumar Chakravathy v. State of West Bengal, : (1959)ILLJ128Cal is the case of a Fire Service Officer whose services were terminated without complying with Art. 311(2) of the Constitution . The learned Judge had held that Art. 14 of the Limitation Act did not govern a suit on the allegation that the order of termination of service was void. It is needless to multiply instances, but it is relevant to point out that in Thiruvengkatacharyulu v. Secy. of State, AIR 1934 Mad 147 a Division

Bench of the Madras High Court ruled out the application of Art. 14 with regard to an order or act of an officer of the Government, which was void or illegal or ultra vires. That was a suit questioning the assessment on resumption. It was expressed thus at page 153 :

'The proper Article for a suit for a declaration and injunction is Art. 120 of the Limitation Act. It may be that if the ground of such a suit is not that the act of Government was ultra vires or illegal but a mere irregularity which does not vitiate the main proceedings but relates only to some question of detail such as the exact amount to be collected or something of that kind which does not make the proceedings ultra vires, in such a case that Art. 14, Limitation Act may apply or in a case falling under the Revenue Recovery Act even Section 50, Revenue Recovery Act may apply. But where the act of the Government in respect of which a declaration and injunction is sought is an act which is illegal or ultra vires and the declaration is sought on that basis, then in such a case neither S. 59, Revenue Recovery Act nor Art. 14, Limitation Act applies.

(7) In *Lakshmanrao Madhavarao Jahagirdar v. Shrinivas Lingo Nadgir*, AIR 1927 PC 217 the Privy Council expressed the view that if an order is illegal, the plaintiff is not bound to file a suit to set it aside.

(8) The plaintiff in this suit had prayed for a declaration that the order discharging him was null and void, and inoperative ab initio. The rest of the reliefs were consequential. The consistent trend of judicial pronouncements is that non-compliance with the constitutional guarantee renders the order as one 'void and inoperative or illegal and ineffective' or 'ultra vires'. It is therefore difficult to accept the contention that the order of discharge would only be irregular for non-compliance with the show-cause notice provision and Art. 14 is attracted. I agree with the finding of the learned trial Judge that the suit is governed by Art. 120 of the Indian Limitation Act, a residuary provision, and not by Art. 14 of the Limitation Act as contended by the learned Government Pleader. There is no controversy before me that if Art. 120 of the Limitation Act applies, the suit is in time.

(9) The second point relates to the arrears of salary claimed by the plaintiff in the suit. It has been held by the Supreme Court in *The State of Bihar v. Abdul Mazid*, :

(1954)IILLJ678SC that a suit would lie against the Government for arrears of salary. Art. 102 of the Limitation Act provides a limitation of three years for a suit for wages not otherwise expressly provided for by the schedule. The starting point of limitation is when the wages accrue due. In Punjab Province v. Tara Chand, AIR 1947 FC 23, the learned Judges considered the provisions of the Limitation Act governing a suit by a servant of the Crown in India who was dismissed in contravention of provisions of Section 240(3) of the Government of India Act of 1935 to maintain a suit for recovery of pay due to him. The learned Judges held that Art. 102 of the Limitation Act governed the suit in regard to arrears of pay. This was adopted by the Supreme Court in Madhav Laxman Vaikunthe v. State of Mysore, : [1962]1SCR886 . The learned counsel for the respondent -plaintiff does not dispute this aspect of the case presented by the Government Pleader. Following these pronouncements, it must be held that the plaintiff would be entitled only to arrears of salary for three years prior to suit and no more.

(10) The result is that appeal succeeds only to the extent of the modification in the trial Court's decree that only three years' arrears of pay would be decreed to the plaintiff- respondent. Except for this modification, the rest of the decree will stand confirmed.

(11) C. C. C. A. 63 of 1961 is, therefore allowed . In the circumstances of the case, there will be no order as to costs in this Court.

(12) In view of the Judgment just pronounced in C. C. C. A. 63 of 1961, the party and the learned counsel appearing for him do not press C. C. C. A. 24 of 1962. The appeal is dismissed, but in the circumstances without costs.

(13) Order accordingly.