

Mahinder Singh Jagdev Vs. Union of India and ors.

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Overruled by : [Secretary, Ministry of Works & Housing Govt. of India and Ors. Vs. Mohinder Singh Jagdev and Ors](#)

SooperKanoon Citation : sooperkanoon.com/701908

Court : Delhi

Decided On : Mar-22-1994

Reported in : 1994(30)DRJ330

Judge : G.C. Mittal, C.J. and; K. Shivshankar Bhat, J.

Acts : [Constitution of India](#) - Article 311(2); [Limitation Act, 1963](#) - Article 7

Appeal No. : Regular First (OS) Appeal No. 27 of 1974

Appellant : Mahinder Singh Jagdev

Respondent : Union of India and ors.

Advocate for Pet/Ap. : Keshav Dayal,; C.N. Aggarwal,; B.S. Oberoi and;

Judgement :

Gokal Chand Mital, C.J.

(1) Mahinder Singh Jagdev, the plaintiff-appellant, was appointed as a supervisor with the Central Water & Power Commission on 8-6-1954, where he continued up to 11-10-1954, as he resigned from that post.-

(2) Thereafter, he joined the Central Public Works Department (for short CPWD) as a Section Officer vide letter of appointment dated 7-3-1956. On 11-6-1956, he

completed his training and test.

(3) The Executive Engineer, Central Water & Power Commission filed a complaint to the police on 6-10-1956 alleging that the plaintiff had made mis-statements about his educational qualifications and had produced forged Certificate¹¹. seeking appointment as a supervisor in the Central Water

(4) On 8th May, 1964, the plaintiff was acquitted by the criminal court. Soon thereafter, he made a representation to the Chief Engineer. Cpwd, for reinstatement, as he was acquitted by the criminal court. He received a reply Ex. P-23 dated 31st August, 1964, directing him to refer the matter to the Superintending Surveyor of Work II, from where his services were terminated. On 19th June, 1964, the plaintiff made a representation to the aforesaid authority. The said authority vide Ex.P-24, dated 9th October, 1964, sought certain original letters from him and it was mentioned that further action would be taken on receipt of the above mentioned letters. Immediately on 15th October, 1964, the plaintiff furnished documents. Vide Ex.P-25, dated 3rd December, 1964, he received intimation that request for reinstatement has been turned down. On 6th March, 1965, he got a notice under Section 80 Civil Procedure Code issued and on 13th August, 1965, he filed a petition to sue in forma pauperis claiming a decree that he entitled to Rs.40,000 by way of salary etc. and Rs.40,000.00 towards damages and Rs.4,000.00 by way of expenses for wrongful criminal prosecution. Ultimately, the case was transferred from the Court of the Senior Sub Judge to the High Court after the application to sue in forma pauperis was allowed, the suit was registered and written statement was filed. The main defenses were that the suit was barred by limitation and that the plaintiff being temporary employee, his services were terminated under Rule 5 of the Rules after giving requisite notice of one month.

(5) On the pleading of the parties the following issues were framed 1. Whether the suit is barred by limitation 2. Whether the termination of the service of the plaintiff was wrongful and mala fide 3. Whether the prosecution of the plaintiff was on false and malicious report If so, what are the damages and losses sustained by the plaintiff 4. Whether the impugned orders dated September 10, 1957, terminating the services of the plaintiff and that of date December __ 1964, refusing the

plaintiff after his acquittal amounts to dismissal 5. To what arrears of salary and damages, if any, is the plaintiff entitled 6. Relief.

(6) After trial of the suit, a learned single Judge of this Court vide judgment and decree dated 12th April, 1974, dismissed the suit giving a finding on the issue of limitation that the suit was barred by time. On merits, it was held that there can be no manner of doubt that the impugned order of termination of services did cause a stigma on the plaintiff and is not an order of termination simpliciter under Rule 5 of the Rules. It was held that the said order was in violation of the provisions of Article 311(2) of the [Constitution of India](#) and was bad in law.

(7) This is plaintiff's appeal.

(8) On a consideration of the matter, we are of the view that the appeal deserves to succeed. The facts of the present case are somewhat better than the case decided by the Supreme Court in Babu Lal v. State of Haryana Air 1981 S.C. 1310. In that case, an ad-hoc employee was placed under suspension on the sole ground that criminal proceedings were pending against him and while the proceedings were pending, his services were terminated while under suspension. Ultimately, the criminal proceedings end in acquittal but he was neither reinstated nor considered for regularisation. The Supreme Court held that the order of termination of services was illegal and that the employee is entitled to be reinstated on being acquitted from the criminal charge. It was also ruled, on the facts of the case, that though the order is innocuous on the face of it, it was necessary, for ends of fair play and justice, to lift the veil and find out real nature of the order. In the above referred case, the order of termination was passed on 17th November, 1980 and fortunately for the employee, in that case, he was acquitted on 21st October, 1981 and he filed a suit which was within 3 years of the order of termination as also the order of acquittal. It is true that in this case, if the limitation is to be counted from the date of order of termination, the suit would be beyond time, but if the limitation of three years is to be counted from the date of acquittal and the date of rejection of his request for reinstatement, then the suit is well within time.

(9) In support of the plaintiff's plea that the suit is not barred by limitation, reference may be made to the decision of the Constitution Bench of the Supreme Court in the State of Madhya Pradesh v. Syed Qamarali, 1967 S.L.R. 228 (S.C.). The facts in this case along with others for offences under Sections 304, 201 and 331 read with Section 34 of the Indian Penal Code Ultimately, he as well as others were acquitted. Thereafter, departmental enquiry was started against him on the same facts and by order dated 22nd December, 1945 passed by the Inspector-General of Police, he was dismissed from service. An appeal to the Provincial Government failed on 9th April, 1947. He challenged the order of dismissal to be void by filing a suit on 8th December, 1952 and also prayed for recovery of arrears of pay and allowances for three years immediately preceding the date of institution of the suit. It was pleaded that the suit was filed seven years after the termination and was barred by limitation. Even if limitation was to be counted from the date of dismissal of the department appeal, the suit was filed more than five years thereafter and yet it was held that the order of dismissal being totally invalid, the police officer could claim that he continued to be in service without specifically asking for setting aside the order to dismissal and to claim the arrears of pay and allowances for three years proceeding the filing of the suit.

(10) The facts of the instant case was much better. Hence, after the order of termination comes the order of acquittal followed by the rejection of request for reinstatement on acquittal. Both there things happened within three years of the suit. Hence, the suit was in time.

(11) Even if we go by the .analogy of the decision in Syed Qamarali supra, then the plaintiff can be held to be in service and can be allowed arrears of pay and allowances for three years immediately preceding the filing of the suit and the suit cannot be held to time barred.

(12) If the criminal court had decided against the plaintiff, he would not have had any cause of action to file the suit declaring his termination to be bad. Accordingly, we are of the view that the.suit is not barred by time and the finding to the contrary, recorded by the learned single Judge, is hereby reversed.

(13) On merits, we endorse the finding of the learned single Judge that the termination of services of the plaintiff was bad in law, which finding was not seriously challenged on behalf of the respondent.

(14) Accordingly, the appeal is allowed with costs throughout and the plaintiff is granted decree that the order of termination was bad in law, that he continued in service without any break till superannuation and since he stood superannuated during the pendency of the appeal somewhere in early eighties, (counsel for the parties could not give the exact date of superannuation), as a result of this decree the plaintiff-appellant will be entitled to all benefits of service right from the date of termination of his services till he superannuated with all consequential retiral benefits i.e., pension etc.

(15) Let the amount due under this decree be paid within six months from today. On the amount which remains unpaid on the expiry of six months, the plaintiff will be entitled to interest at the rate of 12% p.a. from the date it fell due till payment/realisation.