

Ziyayuddin Sadruddin Vs. State of Gujarat

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Court : Gujarat

Decided On : Nov-25-1977

Reported in : (1978)19GLR790

Judge : B.J. Divan, C.J. and; N.H. Bhatt, J.

Appellant : Ziyayuddin Sadruddin

Respondent : State of Gujarat

Judgement :

N.H. Bhatt, J.

1. This is an appeal under Clause 15 of the Letters Patent by the original plaintiff of the civil suit no. 713 of 1968 decided by the City Civil Court Judge at Ahmedabad, who was pleased to decree his suit for a declaration that his dismissal from Police service was bad at law and consequently he was entitled to arrears of pay, allowances and emoluments available to him according to law with effect from 25-5-1960, the day of his suspension, till the date of the suit as if he was although out on duty. Being aggrieved by the said judgment of the learned trial Judge, the State of Gujarat had preferred First Appeal No. 493 of 1972 in this Court. The said appeal had come to be decided by the learned Single Judge of this Court by his judgment dated 6-10-76. The learned Single Judge allowed the appeal partly. He confirmed the decree of the trial court to the extent that it declared the impugned order of dismissal as null and void. He however, held that

the plaintiff was entitled to arrears of salary and allowances only from 1-4-1965 upto the date of the institution of the suit, that is, on 1-4-1968. The rest of the claim of the plaintiff was negatived by the learned Single Judge on the ground that it was barred by limitation. The present appeal has been directed only against that part of the order of the learned Single Judge that adversely affected the original plaintiff.

2. The only question that falls to be determined in this appeal is whether the plaintiffs claim for arrears of wages prior to 1-4-65 could be said to be time-barred or not. Mr. Mehta, the learned advocate appearing for the original plaintiff-appellant, invited our attention to the judgment of the Division Bench of this Court in the case of Laxmiben Girdharlal Patel and Ors. v. State of Gujarat and Anr. II G.L.R. page 51. Frankly we say that if the ratio of that case governed-, the plaintiffs case would squarely fall under that ratio and the plaintiff would be entitled to the decree as granted in his favour by the trial Court. However, the Supreme Court has dealt with the question of the salary in such suits in the case of Jaichand Sawhney v. Union of India : [1970]3SCR222 . It was a case almost analogous to the one on hand. In that case, the appellant before the Supreme Court had filed a suit against the respondent-Union of India for setting aside the order of his removal and for a certain sum, being the amount of arrears of salary and damages for wrongful termination of employment. The trial court held that the dismissal order was illegal, but had partially decreed the money claim. The High Court in appeal awarded arrears of salary for three years prior to the date of the suit. In appeal before the Supreme Court, the appellant original plaintiff contended that under Article 102 of the Limitation Act, the period of three years commenced to run from the date on which the order of dismissal was set aside either by a departmental authority or by a civil court in a suit or other proceeding and that the cause of action in such a suit by a dismissed employee arose only after the institution of the suit, if the court had come to set aside the order of dismissal or removal. On behalf of the appellant, reliance was sought to be placed on one earlier judgment of the Madras High Court in the case of State of Madras v. A.V. Anantharaman 1963 Indian Law Reporter Madras page 1014. Negating the contention of the said plaintiff-appellant, the Supreme Court has stated that the fundamental Rule 52, which is analogous to Rule 150 of the B.C.S. Rs pressed into service by Mr. Mehta before us and relied upon by the Division Bench in the

case of Laxmiben (supra), the Supreme Court held that the contention could not be accepted. It was further observed that when the order of dismissal or removal was set aside by the court on the ground of failure to afford the constitutional protection, the order was declared invalid ab initio, that is, as if it in law never existed, and the public servant concerned was unlawfully prevented from rendering service. On carrying the said conclusion to its logical limits, the Supreme Court held that the salary due to the public servant concerned must be deemed to have accrued month after month because there was for all practical purposes no operative order of dismissal or removal from service. As a conclusion, the Supreme Court held that the period of limitation under Article 102 (of 1908 Act) commenced to run when the wages accrued due and wages accrued due when in law the servant became entitled to wages.

2.1 This judgment Was followed by the Supreme Court in another case, in the case of Sakal Deep Sahai Srivastava v. Union of India and Anr. : (1974)ILLJ270SC . The Supreme Court in thin case examined the scheme of the Limitation Act 1963 and held that despite the view by the Supreme Court that Article 102 of the Limitation Act, 1908 was applicable to claims of arrears of salary, the Parliament while enacting the Limitation Act 1963 had not chosen to-make suitable amendments. The Supreme Court, therefore, reiterated its earlier view that only three years' salary could be awarded by a civil court, declaring the order of dismissal void ab initio.

3. In view of the above ratio of the Supreme Court, Laxmiben's case (supra) does not stand in any good stead to the appellant-original plaintiff. The result is that the appeal fails and is dismissed with no order as to costs.

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