

service of the defendant on the date of the suit. I think, Mr. Hardy is right in his submission and Mr. Shankar also does not very seriously dispute the same. In this view, the appeal of the Union of India is allowed only to the extent that decree for arrears of salary granted by the trial court is reduced from Rs. 24,430.65 P. to Rs. 18,420.82 P. The plaintiff is granted a declaration that his dismissal from service is illegal and he was in service on the date of the suit. In the circumstances of the case, however, the parties are left to bear their own costs.

Union of India  
v.  
Ram Nath  
Kapur, J.

B.R.T.

LETTERS PATENT APPEAL

*Before D. Falshaw, C.J. and Daya Krishan Mahajan, J.*

DAULAT RAM,—Appellant

*versus*

SURINDER KUMAR AND OTHERS,—Respondents.

Letters Patent Appeal No. 376 of 1964.

*Code of Civil Procedure (Act V of 1908)—Order XXXII Rule 7—Guardian of a minor—Whether can enter into compromise with the leave of the Court when, at the time the compromise is entered into, the minor has attained majority and has ceased to be a minor—Such a compromise—Whether binding on the minor.*

1966.

February 23rd.

*Held*, that a compromise entered into by the guardian of a minor with the leave of the Court when, at the time the compromise was entered into, the minor had attained majority and had ceased to be a minor, is not binding on him and the *quondam* minor can avoid it in appropriate proceedings. Merely because proceedings could be lawfully carried on by the *quondam* guardian in a litigation in which the minor is involved will not confer on the *quondam* guardian power to enter into a contract or compromise on behalf of the minor who has ceased to be a minor at the time the contract or compromise is entered into. The minor, having attained majority, is capable of giving his consent which must be obtained by bringing him on the record, if he is to be bound by the compromise.

*Letters Patent Appeal under clause 10 of the Letters Patent from the judgment of the Hon'ble Justice A. N. Grover, dated 24th July, 1964, passed in Regular Second Appeal No. 569 of 1963, reversing that of Shri Muni Lal Verma, Additional District Judge, Karnal,*

dated 24th December, 1962, who modified that of Shri Raj Kumar Gupta, Additional Sub-Judge, III Class, Karnal, dated 26th July, 1962, and allowing the appeal and setting aside the consent decree so far as the appellant is concerned, after holding that the compromise dated the 24th December, 1962 was not binding on him and further ordering that the matter shall now go back to the lower appellate court for disposal of the appeal filed by the present appellant.

G. C. MITTAL, AND K. S. SAINI, AND N. C. JAIN, ADVOCATES, for the Appellant.

PURAN CHAND AND D. C. AHLUWALIA, ADVOCATES, for the Respondents.

### JUDGMENT

Mahajan, J.

MAHAJAN, J.—This is an appeal under clause 10 of the Letters Patent and is directed against the decision of a learned Single Judge of this Court reversing, on appeal, the decision of the lower appellate Court deciding the appeal on compromise.

A consent decree was passed on the 24th December, 1962, in the lower appellate Court, Surinder Kumar was a party to that appeal. He was a minor at the time when the appeal directed against the decree in that suit was compromised. In that suit, he was represented by a guardian. He attained majority on 2nd December, 1961, as has been found by the District Judge in his report dated the 18th November, 1963. This report was called by the learned Single Judge by his order dated 13th September, 1963. It is, therefore, clear that on the date the appeal was compromised, Surinder Kumar was not a minor.

The short question that fell for determination before the learned Single Judge was whether a guardian of a minor could enter into a compromise with the leave of the Court when, at the time the compromise is entered into, the minor had attained majority and had ceased to be a minor. The learned Single Judge has held that in such circumstances, the quondam guardian cannot enter into a valid compromise and even if it is entered into, it is not binding on the minor and the minor can avoid it in appropriate proceedings. The learned Single Judge has, in this connection, based his decision on a Division Bench decision of the Madras High Court in *Lanka Sanyasi v. Lanka Yerran Naidu and others* (1), and has preferred this

(1) A.I.R. 1928 Mad. 294.

decision to a decision of the Lahore High Court in *Ghulam Nabi v. Basheshar Mal and others* (2), which had taken a contrary view. There is also a Division Bench decision of the Mysore High Court reported as *Nanjiah and others v. Maregowda and others* (3), where precisely the same question fell for determination. The Mysore Court has considered both the Lahore and the Madras decisions and has preferred to follow the Madras decision. It will be proper, therefore, to set out the relevant observations of the Mysore Court on this matter:—

Daulat Ram  
v.  
Surinder Kumar  
and others  

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Mahajan, J.

“The first point for consideration is whether a decree on the basis of a compromise entered into by the next friend of the minor plaintiffs is binding on one of the plaintiffs who had attained majority before the compromise. It has been laid down by Le Rossignol, J., in *Ghulam Nabi v. Basheshar Mal* (2), that”

“A quondam minor cannot maintain a suit for a declaration that a decree passed against him on a compromise accepted on his behalf by his guardian ‘*ad litem*’ with the consent of the Court, shall be of no effect, on the ground that at the time of compromise and decree the plaintiff had become ‘*sui juris*’, and consequently was not represented before the Court. A minor party who at the date of decree has attained majority may not impeach a decree passed against him except by a separate suit on the ground of fraud or gross negligence of his guardian.”

The judgment is that of a Single Judge and it must be stated that all that is stated is that the plaintiff must be regarded as having been an adult judgment-debtor who could have applied for a review of the decree and that he is not competent to maintain a suit to avoid that decree except on grounds of fraud. No reasons are given to show how a decree based on consent cannot be “avoided by a suit by a person who was not a party to the consent. As against this decision there has been the judgment in *Sanyasi v. Yerran Naidu* (4), in which the question has

(2) A.I.R. 1922 Lah. 407.

(3) A.I.R. 1952 Mysore 134.

(4) 55 Mad. L.J. 374.



major defendant in a suit, another person can by his consent to a decree, make it a valid decree binding on him. There is no allegation here that Hombalamma was the agent of the opponent, or that the opponent gave his consent to the decree and it cannot, therefore, be held that by the consent of Hombalamma, the plaintiff has got a valid decree against the opponent. The consent of Hombalamma to a decree against the opponent cannot be deemed to be his consent and a decree passed on such consent is not a consent decree binding on the opponent."

Daulat Ram  
v.  
Surinder Kumar  
and others  
Mahajan, J.

Whatever may be the effect of a decree obtained after adjudication on merits in a suit on a party who, though a minor at the time of filing the suit, had attained majority, was not brought on record as major before the decree was passed, it cannot be said that a decree based on the consent of a next friend or guardian *ad litem* is binding on him unless he was brought on record as major and he is a party to the consent. In this case though the first plaintiff was a minor at the time OS. 35/45-46 was filed, he had attained majority by the time his mother purporting to act as his next friend consented to the compromise. His mother could not act as the next friend after he attained majority and she was in no way his agent to bind him by her consent. The decree passed on such a compromise cannot be binding on the first plaintiff, and as such the decree as against him has to be set aside."

I am in respectful agreement with the aforesaid statement of the law. I am not prepared to hold that merely because proceedings could be lawfully carried on by the *quondam* guardian in a litigation in which the minor is involved would confer on the *quondam* guardian power to enter into a contract on behalf of a minor who, had ceased to be a minor when the contract was entered into. It is not disputed before us that a decree by consent is a decree passed on the basis of a contract. I am, therefore, clearly of the view that the learned Single Judge was right in his view that the consent decree, in the circumstances of the present case, will not bind the minor. The consent decree has to be set aside so far as the minor is concerned. The question

Daulat Ram  
v.  
Surinder Kumar  
and others

Mahajan, J.

as to what repercussions this order will have on the consent decree, so far as the other parties to it are concerned, is left open as that was not the matter which was canvassed before the learned Single Judge.

For the reasons recorded above, this appeal fails and is rejected but there will be no order as to costs. The parties are directed to appear before the lower appellate Court on 21st March, 1966. The lower appellate Court is directed to dispose of the appeal without any further delay.

Falshaw, C. J.

FALSHAW, C.J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS.

*Before S. B. Kapoor, J.*

M/S MULLER & PHIPPS (INDIA). PRIVATE LTD.,—*Petitioner*

*versus*

M/S MULLER & PHIPPS (INDIA), PRIVATE LTD., EMPLOYEES' UNION, AND OTHERS,—*Respondents.*

C.W. 754-D of 1965.

1966  
February 24th

*Industrial Disputes Act (XIV of 1947)—Ss. 2(k) and 25-H—Dispute regarding re-employment of retrenched workman—Whether can be sponsored by the Union of workmen of that establishment although the concerned workman was not its member when the dispute arose—Vacancy occurring in which retrenched employee could be re-employed but filled in by promotion of a junior person in the office—Retrenched employee—Whether deemed to have been re-employed from the date the vacancy occurred.*

*Held*, that a Union of the workmen of an establishment can espouse the cause of a retrenched workman who is not its member at the time the dispute arose with regard to his re-employment under section 25-H of the Industrial Disputes Act, 1947. It cannot be said that the Union had no direct and substantial interest in his re-employment.

*Held*, that the company was bound to offer the vacancy of a salesman to the retrenched salesmen in order of seniority and could not fill it by promoting a junior clerk. The retrenched salesman is,