We further direct that the assessee will pay the costs of these references to the department. The costs are assessed of Rs. 100 in each case.

M/s Prem Payari Aggarwal
v.
Punjab State

Mahajan, J.

D. FALSHAW, C.J.—I agree.

Falshaw, C.J.

R.S.

APPELLATE CIVIL

Before S. S. Dulat and S. K. Kapur, JJ.

UNIONS OF INDIA,—*Appellant*

versus

RAM NATH—*Respondent.*

Regular First Appeal No. 81-D of 1960.

1966.

February 16th

Limitation Act (IX of 1908)—Art. 102—Suit for arrears of salary by a public servant on the ground that his dismissal was illegal—Terminus a quo—Whether the date of accrual of salary or the date of declaration of his dismissal as being illegal.

Held, that a suit for arrears of salary is governed by Article 102 of the Indian Limitation Act, 1908, according to which the starting point of limitation is "when the wages accrue due." The expression "wages" includes salary, and the period of limitation starts, not from the date of declaration by the Court, but from the date the salary accrues due irrespective of such a declaration. By granting a declaration about the legality or illegality of dismissal, the Court does not create any right in the plaintiff. It merely removes an illegal order from the way of the plaintiff. That would not affect the accrual of the cause of action in any manner, and the cause of action would still arise on the day the salary for a particular period becomes due under the terms and conditions of employment. It must follow that the suit of the plaintiff so far as arrears of the salary are concerned could be decreed only for a period of three years and two months.

Regular First Appeal from the decree of the Court of Shri Om Parkash Aggarwal. Sub-Judge 1st Class, Delhi, dated the 11th day of February, 1960, passing a declaratory decree in favour of the plaintiff against the defendant to the effect that the order dated the 19th January, 1952 dismissing the plaintiff from the defendant's service is illegal, ultravires *and void and also for the recovery of Rs. 24,175.65 nP. together with proportionate costs of this suit but dismissing the rest of the claim in suit.*

S. N. SHANKAR, WITH N. SRINIVASA RAO, ADVOCATES, for the Petitioner.

HARDAYAL HARDY SENIOR ADVOCATE, WITH KESHAV DAYAL, ADVOCATE, for the Respondent.

JUDGMENT

The Judgment of the Court was delivered by:

Kapur, J.

KAPUR, J.—This Judgment will dispose of Regular First Appeal No. 81-D of 1960 and Regular First Appeal No. 23-D of 1961, which are in the nature of cross-appeals against the judgment and decree of Shri O. P. Aggarwal, Subordinate Judge, 1st Class, Delhi, dated the 18th April, 1960.

Shri Ram Nath Chitory Knowal, plaintiff, was employed as a clerk in the Posts and Telegraph Department and after a departmental enquiry was dismissed on 19th January, 1952. From 9th April, 1946, to 18th January, 1952, he remained under suspension. He filed the suit on 5th March, 1957, challenging the order of his dismissal and claiming Rs. 32,737.70 P., as arrears of his pay till 28th February, 1957, and also future pay and allowances at Rs. 275 per month till the decision of the suit. On the pleading of the parties, the trial court framed the following five issues:—

"(1) Whether the suit is in time?

(2) Whether a civil suit is maintainable?

(3) Whether the order of the plaintiff's dismissal dated 19th January, 1952, is illegal, *ultra vires*, and void?

(4) To what amount, if any, is the plaintiff entitled?

(5) Relief."

The trial court decided that the dismissal of the plaintiff was illegal inasmuch as the departmental enquiry was held in violation of rules of natural justice. It, accordingly, granted a declaration to the effect that the order dated 19th January, 1952, dismissing the plaintiff from the defendant's service, was illegal, *ultra vires* and void and also granted a decree for Rs. 24,430.65 P., on account of salary from 19th January, 1952, to 13th January, 1960, the date of the plaintiff's superannuation.

Both the parties, namely, the plaintiff and the Union of India, were aggrieved by this judgment and filed appeals, the appeal of the Union of India being confined to

the plea that the suit for salary could be decreed only for a period of three years and two months and the claim for the balance was barred by time under Article 102 of the Limitation Act. Mr. S. N. Shankar, learned counsel for the Union of India, has relied on a decision of the Supreme Court in *Madhav Laxman Vaikunthe* v. *State of Mysore* (1). Their Lordships of the Supreme Court approved the decision of the Federal Court in *Punjab Province* v. *Tarachand* (2), and held that a suit for arrears of salary was governed by Article 102 of the Limitation Act. The real controversy at the bar has been about the starting point of the limitation. According to the plaintiff, the starting point is the date when a court declares the order of removal illegal while the defendant maintains that the salary becomes due on the last day of each month and the period of limitation for each month's salary begins to run from that day. In view of this controversy and in view of certain decision subsequent to the Supreme Court judgment, it is necessary to examine *Madhav Laxman Vaikunthe's* case very carefully. Before doing so, it is desirable to go to the language of Article 102 for a moment. According to the said provision, the starting point of limitation is: "when the wages accrue due.". In view of the above-mentioned judgment of the Supreme Court, it is not urged that the expression "wages" does not include salary. Having said that, I would proceed to examine the decision of the Supreme Court. The claim in that case was for salary with respect to the period, August, 1946, to November, 1953, the date of retirement of the employee, whose reversion to the substantive rank had been held to be violative of section 240 (3) of the Government of India Act. The amount represent the difference between the pay actually drawn and that to which he would have been entitled but for the wrongful orders. The suit was filed on August 2, 1954. The Supreme Court held that adding a period of two months of the statutory period under section 80 of the Code of Civil Procedure, the suit was within time only from June 2, 1951. There have been some decision in which the judgment of their Lordships of the Supreme Court has been distinguished. In those cases the point of view suggested

(1) A.I.R. 1962 S.C. 8.

(2) 1947 F.C. 89 : A.I.R. 1947 F.C. 23.

Union of India
v.
Ram Nath

Kapur, J.

on behalf of the plaintiff has been accepted. It is, therefore, necessary to deal with the said decisions.

In *State of Madras* v. *Anantharaman* (3), the High took the view that since under Fundamental Rule 52 the right to salary ceases the moment an order for dismissal or removal is made an employee cannot file a suit for recovery of his salary unless the order of removal is declared illegal by a court, and, therefore, the cause of action arises on the date of such a declaration. Madras High Court sought to distinguish the judgment in *Madhav Laxaman Vaikunthe's* case on two grounds: (1) Applicability of Fundamental Rule 52 was not considered in that case, and (2) That was not a case in which Fundamental Rule 52 prevented the accrual of salary. Madras High Court also referred to *Devendra Pratap* v. *State of Uttar Pradesh* (4), in support of their view.

In my opinion, the Supreme Court judgment in *Madhav Laxman Vaikunthe's* case clearly lays down that the period of limitation starts, not from the date of declaration by the court, but from the date it accrues due irrespective of such a declaration. The Supreme Court allowed the claim as regards the arrears of salary and allowance only from 2nd June, 1951, uptil the date of the plaintiff's retirement from Government service. That is, therefore, a decision for the view that irrespective of reversion being declared illegal, the claim to salary could be limited only to the aforesaid period of three years and two months. It is, in the circumstances, hardly open to me to take any view contrary thereto. Coming now to the distinction based on the applicability of Fundamental Rule 52, it does not, in my opinion, affect the matter at all. If the dismissal or removal itself is illegal, logically it must follow that Rule 52 never, in the eyes of law, came into operation. In deciding the legality or illegality of such an order, the court merely declares whether or not any order deserving the attention of law was passed. Such an order cannot by its very nature, alter the date of accrual of cause of action. The function of courts is to interpret law and decide disputes about existing legal rights. The conception of a judicial decision as being one declaratory

(3) A.I.R. 1963 Mad. 425.
(4) A.I.R. 1962 S.C. 1334.

of pre-existing legal rights finds expression in the law reports of many countries. In case like the present, the right of the employee to get his wages, exists independently of the decision by courts on the ground that law will take no notice of an illegal order. The courts in holding such an order illegal merely declare that it was never passed. To subscribe to the other view would mean that a servant, who has been illegally dismissed, cannot maintain an action, for a declaration that his removal is illegal, and for arrears of pay till the date of dismissal. That would be so because his cause of action for arrears would accrue after the declaration. The construction of Article 102 is, therefore, not only concluded by the decision of the Supreme Court but is also supported by the inherent reasonableness of the rule laid down therein.

Mr. Hardy then refers to *Dr. Jnanendra Nath Das* v. *State of Orissa* (5). I do not think any decision was given on the point in this case. There the claim was barred by time on any construction of Article 102 of the Limitation Act. Mr. Hardy also places reliance on *Union of India* v. *R. Akbar Sheriff* (6), I think, on the parity of reasoning this decision also does not persuade me to take a view different from that I have chosen to take. Strong reliance has been placed by the learned counsel on a Division Bench judgment of this court in *K. K. Jaggia* v. *The State of Punjab* (7). It was held that the right to recover full pay and allowances for the period of the employee's interim suspension accrued to him on the day the order of his dismissal was quashed by this Court, and it was from that day that the period of the years prescribed by the Article 102 of the Limitation Act had to be reckoned Reliance was placed on *Dr. Janendra Nath Das's case.* The Supreme Court decision as well as the Federal Court decision, mentioned above, were also noticed. In *Jaggia's case,* the Division Bench of this Court was dealing with a writ petition and Article 102 of the Limitation Act did not directly arise for consideration.

As I have said earlier, by granting a declaration about the legality or illegality of dismissal, the court does not create any right in the plaintiff. It merely removes an

(5) A.I.R. 1964 Orissa 241.
(6) A.I.R. 1961 Mad. 486.
(7) I.L.R. (1966) 1 Punj. 302=1965 P.L.R. 1092.

Union of India v. Ram Nath

Kapur, J.

illegal order from the way of the plaintiff. That would not, in my opinion, affect the accrual of cause of action in any manner, and the cause of action would still arise on the day the salary for a particular period becomes due under the terms and conditions of employment. It must follow that the suit of the plaintiff so far as arrears of the salary are concerned, could be decreed only for a period of three years and two months. The decree of the trial court, therefore, must stand modified to the extent that the suit for arrears is decreed for Rs. 18,420.22 P., only. We are not concerned with the legality of the decree with respect to the period after the institution of the suit since there is no appeal before us by the Union of India on that point.

Mr. Hardy then says that so far as the suspension order is concerned, we should declare that it falls with the declaration of the dismissal order being held illegal, and, consequently, the plaintiff should be allowed a decree for full salary and allowances during the period of suspension. The fate of the suspension order is not really linked with and is not dependant upon the decision as to validity or invalidity of the dismissal order. Validity of the suspension order must stand or fall on its own merits unaffected by the ultimate finding as to the legality or illegality of the dismissal order. The plaintiff, nowhere in the plaint, challenged the legality of the suspension order and it is hardly open to us to examine that question at this stage. The claim of the plaintiff was only based on the plea that the order of dismissal was illegal, and, therefore, he should be held entitled to his pay. In any case, the claim with respect to the suspension period would be barred by time on the construction of Article 102 of the Limitation Act, as discussed herein-above. Mr. Hardy argues that the cause of action to challenge the suspension order would arise only after the dismissal is set aside. As I have said already, the fate of the suspension order has to be decided irrespective of the validity or invalidity of the dismissal order. It must, therefore, be held that the plaintiff's claim on this account is without merit.

Mr. Hardy lastly says that the trial court was not justified in holding that the plaintiff is not entitled to a declaration that he is still in service of the defendant. According to him, the trial court should have confined the declaration to the extent that the plaintiff is declared to be in

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.

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.

1966.

February 23rd.

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.

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,