FULL BENCH

Before S. S. Sandhawalia, C.J., J. V. Gupta and G. C. Mital, JJ.

RADHA RAM,—*Appellant.* ..

versus

MUNICIPAL COMMITTEE, BARNALA,—*Respondents.*

Regular Second Appeal No. 402 *of* 1973.

April 28, 1982.

Specific Relief Act (XLVII of 1963)—Section 34—Services of an employee terminated—Order of termination challenged in a civil court by way of a suit for declaration—Civil court declaring the

order of termination to be illegal and without jurisdiction—Such court—Whether competent to give directions for the payment of arrears of salary while granting the declaration.

Held, that once the relief of setting aside or quashing the order of termination has been granted, or a declaratory decree has been passed to the similar effect, it necessarily follows that the employee in the eye of law continues to be in service and as a necessary consequence thereof would be entitled to all the emoluments flowing from that status. He must be deemed to be in a position identical with that existing prior to the passing of the order of termination or his service. The emoluments of the post are a logical consequence of setting aside the order of termination. In such a situtation to insist upon the filing of a second suit for a relief which directly flows from the declaratory decree can hardly be warranted. The hallowed rule that the law disfavours multiplicity of proceedings would again require that the consequential relief should be recorded in the original proceedings itself. This seems to be more so because in essence the dause of action for the claim to salary and emoluments is co-terminus with the decree setting aside the wrongful termination. Therefore, no issue or bar of limitation now raises any hurdle in this context. Thus, in a suit for declaration, the civil court or the High Court sitting in appeal or otherwise is competent to give directions for the payment of the arrears of pay as a result of the dismissal order having been declared illegal or without jurisdiction. (Para 12).

Case referred by Hon'ble Mr. Justice J. V. Gupta,—vide *order dated 2nd September, 1981 to a larger Bench for decision of the important question of law involved in the case. The Division Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, and Hon'ble Mr. Justice J. V. Gupta,*—vide *order dated 9th (December, 1981, again referred it to the full Bench. The full Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice J. V. Gupta and Hon'ble Mr. Justice Gokal Chand Mital after deciding the referred questions sent the case back to the Single Judge for decision of the case on merits.*

Regular Second Appeal from the order of the Court of Shri Nirpinder Singh, P.C.S. Additional District Judge, Barnala, dated 15th December, 1972 affirming that of Shri A. C. Rampal, P.C.S. Sub-Judge 1st Class, Barnala dated 21st July, 1970, dismissing the suit of the plaintiff and leaving the parties to bear their own costs.

Ashok Bhan, Advocate with Ajay Kumar Mittal, Advocate, *for the Appellant.*

H. L. Sarin, Senior Advocate with R. L. Sarin, Advocate *for No. 1.*

M. J. S. Sethi, Additional A. G., *for the State.*

JUDGMENT

S. S. Sandhawalia, C.J.—

1. The meaningful and the significant question culminating in this reference to the Full Bench has been formulated in the following terms :—

> "Whether, in a suit for declaration, the Civil Court or the High Court sitting in appeal or otherwise is competent to give any direction etc. for the payment of the arrears of pay as a result of the dismissal order having been declared illegal or without jurisdiction."

Manifestly, the issue aforesaid is pristinely legal, yet a brief outline of the matrix of facts giving rise thereto becomes inevitable.

2. Radha Ram appellant (in RSA No. 402/1973) was appointed a Moharrir on a permanent basis by the Municipal Committee of Barnala on the 2nd January, 1965. However, by an order dated 27th July, 1966, the respondent Municipal Committee terminated the appellant's services with immediate effect in pursuance of a Government direction purporting to have been given under section 41 of the Punjab Municipal Act (hereinafter referred to as the Act). On the 10th July, 1969, the appellant instituted a suit for declaration that the termination order dated 27th July, 1966, was absolutely illegal, unconstitutional, without jurisdiction, null and void and that the appellant be deemed to be still in the service of the respondent Municipality enjoying full rights and privileges of monthly salary dearness and other allowances including annual grade increments already accrued or yet to accrue in future. This suit was strenuously contested on behalf of the respondents and on the pleadings of the parties, the following issues were framed :—

> "1. Whether the order passed by the Municipal Committee, Barnala, on 27th July, 1966, terminating the services of the plaintiff is illegal, unconstitutional, without jurisdiction, null and void ?
>
> 2. Whether the plaintiff was afforded any opportunity of being heard before the impugned order was passed against him ? OPD.
>
> 3. Relief".

The trial court decided the two issues against the appellant and, consequently, dismissed the suit. On appeal, the learned Additional District Judge, Barnala, affirmed the judgment of the trial Court. The appellant then preferred the present regular second appeal which finally came up for hearing before my learned brother J. V. Gupta, J. Before him, little or nothing could be urged on behalf of the respondent Municipal Committee on merits but it was prayed that the appellate court in its discretion may decline the relief of reinstatement and consequential benefits. The learned single judge being apparently inclined to accept the appeal, it was strenuously contended before him on behalf of the appellant that in the event of the order of termination being set aside he was entitled to the reliefs claimed by him as a matter of course and, as a logical consequence of being deemed to be still in service, to all the emoluments, including salary, increments, dearness allowance, etc. In view of the significance of the question raised, Gupta, J., referred the matter to a Division Bench for consideration.

3. Before the Division Bench, learned counsel for the appellant strenuously pressed for the issuance of a direction to the respondents for the payment of the arrears of salary and other emoluments from the date of the termination, in the event of the appeal being allowed. Specific reliance in this context was placed on such a direction given by their Lordships of the Supreme Court in *Krishan Murari Lal Sehgal* v. *State of Punjab* (1). On behalf of the respondent, however, the very power and jurisdiction of the High Court as also of the trial court to issue any such direction in a declaratory suit was strenuously contested. In view of this, it became necessary to refer the question, mentioned at the outset, for an authoritative adjudication by the Full Bench. In Civil Revision No. 2718 of 1980, somewhat similar issues were involved and this was, therefore, directed to be heard along with the present regular second appeal. This is how the matter is before us.

4. At the very outset, I would wish to make it clear that on settled principles we are examining the referred question in the specific context of the illegal termination of the services of an

(1) C.M. 10572 of 1978 in C.A. 1298 & 1299/69 decided on 16th October, 1978.

employee and a suit for seeking declaration to that effect. Equally, it calls for pointed notice that even the learned counsel for the respondents had very fairly conceded that any hyper-technicalities based on the language or form in which the relief is claimed, or later even accorded and couched, is of little or no significance. This arises in view of the fact that some fragmentary distinction was sought to be drawn betwixt the plaintiff claiming himself to be still deemed in service, as against one asking for a declaration that the order of termination is non-est. Both on the fair stand of the parties as also on larger considerations, one must-by-pass any such verbal booby traps in this context. The legal and the substantial effect of declaring the order of termination as illegal and non-est is that the employee would be deemed to continue in service as before. In the eye of law, the result is as if no such order had ever been passed. In essence, the quashing of the termination restores the *status quo ante* as regards the employee. Therefore, the mere use of terminology either claiming to be "deemed in service" or a declaration that the order of termination is illegal and without jurisdiction, makes no difference, as the said terminology is identical in its legal import.

5. Adverting, now to precedent it deserves highlighting that in the ultimate analysis I am inclined to the view that the answer to the legal question before us has at least implicitly, if not explicitly, been rendered by the final court itself in *Krishan Murari Lal Sehgal* v. *State of Punjab* (2). In this view of the matter, it becomes necessary to advert in some depth to the facts of the said case and its legal history and what necessarily flows from the aforesaid judgment and more particularly from the categoric order passed in the subsequent Civil Misc. Petition No. 10572 of 1978 in Civil Appeals Nos. 1298, 1299 of 1969.

6. In *Krishan Murari Lal Sehgal's* case (supra) the appellant had joined Government service in Patiala State way back in the year 1948. On the formation of the new State of Punjab with the merger of the erstwhile Pepsu and Punjab State, the appellant was integrated in the service of the new State as a permanent Assistant

(2) AIR 1977 S.C. 1233.

in the grade of Rs. 150-10-300 and was actually drawing Rs. 170 p.m. when he was dismissed from service on the 21st October, 1959, by the order of the Financial Commissioner. In March, 1962, he instituted a suit seeking a declaration that the dismissal order aforesaid was *non-est* and that he continued to be in the service of the State of Punjab. He also claimed increments due to him up to the 5th July, 1959. This suit was decreed on the 15th January, 1963.

7. Meanwhile, in June 1962, the appellant had instituted another suit in *forma pauperis* claiming a decree for Rs. 8,689/- as arrears of salary and allowances and also a decree for Rs. 278.12 p.m. from 5th June, 1962 to 4th July, 1962 and Rs. 290 p.m. from 5th July, 1962 up to the date of the decree. This suit was decreed by the trial court on 15th January, 1963. Against the aforesaid two decrees, the State of Punjab preferred Regular First Appeals No. 120 and 134 of 1963. Both these appeals were allowed by the Division Bench with the result that both the suits were dismissed,—*vide State of Punjab* v. *Krishan Murari Lal* (3). The appellant then preferred Civil Appeal Nos. 1298 and 1299 of 1969 in the Supreme Court. Both these appeals were allowed by their Lordships with the following observations :—

> "In the result both the judgments of the High Court are set aside and the judgments and decrees of the Subordinate Judge Ist Class, Patiala, stand restored."

8. It would appear that despite the success of the appellant before the final court he was denied the emoluments beyond 15th January, 1963, when his suit was decreed by the Subordinate Judge Ist Class, Patiala. Thus, faced with the not unusual nightmare which bedeyils, (by the denial of salary, emoluments, etc.) even the successful employees after they have secured a declaration that the termination of their services is non-est, the appellant then preferred Civil Misc. Petition No. 10572 of 1978 subsequent ot the two Civil Appeals in the Supreme Court in his favour on 9th February, 1977 It was on the said miscellaneous application that their Lordships issued the under-mentioned categoric direction :—

> "Heard. counsel for the parties. This application is disposed of on a short ground. It has become necessary to clarify the

(3) 1966 C.L.J. 968.

order made by this Court allowing the appeals of the petitioner. According to the decision of this Court, the petitioner was given a declaration that he would be deemed to continue in service with effect from the date of the suit. *As a logical consequence of this declaration, it is manifest that the petitioner would be entitled to back-salary right from 1st June, 1962 till 9th February, 1974. The only way in which the judgment of this Court can be implemented is to pay the aforesaid amount of salary to the petitioner. With these observations, this application is disposed of. The amount of the salary must be paid within two months from today.*"

Viewing the issue in the context of the aforesaid enunciation, there seems to be no escape from the conclusion that a direction of the aforesaid nature is not only within the power of the trial court and the appellate court but in the felicitous language of their Lordships of the Supreme Court is the only way in which judgments of this nature can be implemented. Apparently, in a refreshing departure from any staid hyper-technicalities of the law, their Lordships have said in no uncertain terms that the right to get the emoluments and back-salary is a logical consequence of a declaration that the employee continues in service or what, in effect, is the same thing that his termination is illegal or without jurisdiction. Pre-emptory language has been used with design and calculated effect to lay down that the petitioner Krishan Murari Lal Sehgal would be entitled to his back-salary right from the date of the decree till the 9th February, 1974, for a period of about 12 years. Not only this, their Lordships time-bound their order to see that this must be paid within two months from the date of the order. It deserves recalling that originally their Lordships by their Judgment had only restored the decree of the trial court which had granted the salary up to the 15th January, 1963. Therefore, the grant of relief of payment of salary for 11 years thereafter was rested wholly on the direction given by their Lordships and not on any existing decree or a prayer for any such relief earlier. It follows inexorably from the above that a direction of this nature is not only within the jurisdiction of the courts of law but from the language used by their Lordships appears to be the proper if not the only, mode of relief in such cases.

9. In the wake of *Krishan Murari Lal Sehgal's case* it seems to have been accepted unreservedly within this Court that such a direction is not only within jurisdiction but indeed desirable where a relief of this nature is otherwise well-merited. Similar directions were thus given in *Sant Singh* v. *State of Punjab* (4) by *Harbans Lal, J.*, as also by my learned brother G. C. *Mital J., in State of Punjab* v. *K. M. Sarvia,* (5) and *Smt. Sajmo Devi and others* v. *Haryana State* (6). In the latter Case reliance for a contrary view was sought to be placed on *Madhav Laxman Vaikunthe* v. *State of Mysore,* (7) and *Union of India* v. *Ram Nath Chitory,* (8), but both these authorities were more than amply distinguished. Learned counsel for the respondent did not raise any serious challenge to the correctness of the aforesaid Single Bench judgments of this Court.

10. Viewed from another angle as well the necessity or in any case the desirability of such a direction (where it is merited) emerges from two recent judgments of the final Court. It deserves recalling in this context that for a considerable length of time in some High Courts the view had prevailed that in such a situation the right to salary and emoluments accrues not when the Court grants a declaration to the effect but either from the point of termination or the date when such emoluments become due. Consequently it had been held that a claim for such salary would be barred by time after three years of the order of termination or when the salary fell due. This view has now been authoritatively reversed and the anomalies flowing therefrom have been forcefully pointed out by their Lordships of the Supreme Court. Reference in this connection may first be made to *State of Madhya Pradesh* v. *State of Maharashtra and others,* (9). Therein the plaintiff-employee had been suspended in September 1943 and removed from service on November 7, 1945. On January 6, 1949, he filed a suit for declaration which was decreed on August 31, 1953 and in pursuance thereto he

(4) C.M. 769/C/80 in RSA 33/1974 decided on 23rd May, 1980.
(5) 1980 Cur. L.J. 9.
(6) 1980 (3) S.L.R. 707.
(7) AIR 1962 S.C. 8.
(8) AIR 1966 Pb. 500.
(9) 1977 (2) S.C.C. 288.

was reinstated on December 12, 1953. Construing the issue of limitation for his claim to salary under Article 102 of the Indian Limitation Act, 1908 and Article 7 of the Limitation Act, 1963, their Lordships held as follows:—

> "* * *. Therefore, the plaintiff's cause of action for salary for the period of suspension did not accrue until he was reinstated on December 12, 1953. The plaintiff's salary accrued only when he was reinstated as a result of the decree setting aside the orders of suspension and of dismissal.

and then—

> The original order of suspension on September 16, 1943 as well as the original dismissal dated November 7, 1945 was declared to be illegal by the decree dated August 30, 1953. Therefore, when the plaintiff was reinstated on December 12, 1953, it is then that of plaintiff's claim for salary accrued due. This salary was again suspended from January 19, 1954. Dismissal on February 23, 1956 was at a time when the plaintiff was still under suspension. The order of suspension does not put an end to his service. Suspension merely suspends the claim to salary. During suspension there is suspension allowance. See *Khem Chand* v. *Union of India*, (10), where this Court said that the real effect of the order of suspension is that though he continues to be a member of the service he is not permitted to work and is paid only subsistence allowance which is less than his salary. Under Fundamental Rule 52 the pay and allowance of a Government servant who is dismissed or removed from service, cease from the date of his dismissal or removal. Therefore, there would be no question of salary accruing or accruing due so long as orders of suspension and dismissal stand. The High Court was correct in the conclusion that the plaintiff's claim for salary accrued due only on the order of dismissal dated February 23, 1956 being set aside."

(10) 1963 Supp 1 SCR 229.

Unreservedly following and reiterating the aforesaid view the observations in *Maimoona Khatun and another* v. *State of U.P. and another* (11) are even more instructive. Therein it was held as under :—

> "It seems to us that if we take the view that the right to sue for the arrears of salary accrues from the date when the salary would have been payable but for the order of dismissal and not from the date when the order of dismissal is set aside by the Civil Court, it will cause gross and substantial injustice to the employee concerned who having been found by a court of law to have been wrongly dismissed and who in the eye of law would have been deemed to be in service, would still be deprived for no fault of his, of the arrears of his salary beyond three years of the suit which, in spite of his best efforts he could not have claimed until the order of dismisasl was declared to be void.

and again—

> For these reasons, therefore, we are clearly of the opinion that in cases where an employee is dismissed or removed from service and is reinstated either by the appointing authority or by virtue of the order of dismissal or removal being set aside by a Civil Court, the starting point of limitation, would be not the date of the order of dismissal or removal but the date when the right actually accrues, that is to say, the date of the reinstatement, by the appointing authority where no suit is filed or the date of the decree where a suit is filed and decreed."

In view of the above, it is now settled beyond cavil that the starting point of limitation for the claim of emoluments would be the date of the judgment setting aside the wrongful termination or a declaratory decree to the effect that the employee was deemed to continue in service and not earlier. The original date of dismissal or removal thus becomes irrelevant for the purpose of limitation and no defence or bar on the said basis can, therefore, be raised by the employer to the claim for emoluments. Now if the cause of action itself accrues

(11) 1980 (3) S.L.R. 455.

by the setting aside of the wrongful order of termination, it is apt that along with the same the necessary and consequential relief of emoluments which may become due should be granted to the employee. He can be held in no way as remiss or in default for not having filed a suit for emoluments earlier and it would thus be not just to push him to the tortuous process of filing a fresh suit for salary and emoluments even after he has secured a declaration in his favour.

11. Though some sketchy reliance was sought to be placed on behalf of the respondents on the Full Bench judgment in *Parkash Chand* v. *S. S. Grewal*, (12), a closer analysis thereof would indeed indicate that in essence it supports the view I am inclined to take. Therein question No. 1 specifically referred to the Full Bench was in the following terms :—

> "Whether a decree of a Civil Court declaring the order of dismissal of a public servant as void and illegal and treating him to be still in service can be construed as enjoining upon the Government to reinstate the decree-holder and grant him all benefits and privileges, including his past and future emoluments "

After a discussion of principle and precedent the answer thereto was rendered in the following terms :—

> "After careful consideration of the m[redacted]n the light of the judgments referred to above, I am of the opinion that a decree of a civil Court declaring the order of dismissal of a public servant as void and illegal and treating him to be still in service *is to be construed as enjoining upon the Government to reinstate the decree-holder and grant him all benefits and privileges, including his past and future emoluments.* Such a decree will entitle the Government servant concerned to claim the necessary reliefs from the Government and in case of the failure of the Government to grant those reliefs, to file a suit or other legal proceedings to enforce the rights given to him by the declaratory decree."

(12) (1974) 2 I.L.R. Pb. & Hary 56.

Now if it is once held that a declaratory decree enjoins the employer to reinstate the decree-holder and grant him all the benefits and privileges including his past and future emoluments then it is obvious that a direction to that effect only makes pointedly explicit what is plainly implicit in the decree. Such a direction, therefore, only clothes in pre-emptory terms what has held to be enjoined by the decree itself. The aforesaid observations of the Full Bench, therefore, are clearly a pointer to the effect that such a direction would not only be feasible and within jurisdiction but would clothe the spirit of the decree with the letter of the law.

12. Now apart from precedent on larger consideration of principle as well the stand of the appellant herein commends itself for acceptance. Once the relief of setting aside or quashing the order of termination has been granted, or a declaratory decree has been passed to the similar effect, it necessarily follows that the employee in the eye of law continues to be in service and as a necessary consequence thereof would be entitled to all the emoluments flowing from that status. He must be deemed to be in a position identical with that existing prior to the passing of the order of termination of his service. In the felicitous language of their Lordships the emoluments of the post are a logical consequence of setting aside the order of termination. In such a situation to insist upon the filing of a second suit for a relief which directly flows from the declaratory decree can hardly be warranted. The hallowed rule that the law disfavours multiplicity of proceedings would again require that the consequential relief should be recorded in the original proceedings itself. This seems to be the more so in view of the recent judgments of the final court adverted to above holding that in essence the cause of action for the claim to salary and emoluments is co-terminus with the decree setting aside the wrongful termination. Therefore, no issue or bar of limitation now raises any hurdle in this context. It deserves recalling that on the earlier view that the right to salary and emoluments was likely to become barred after a period of three years from the date of the order of termination itself there might have been some justification for the need of a separate suit for emoluments etc. to test it on the anvil of limitation However, since such a view has now been given the go-by and its anomalous results have been authoritatively noticed by the final Court in *State of Madhya Pradesh* v. *State of Maharashtra & others*,

(9 supra) and *Maimoona Khatun's case,* it seems wholly wasteful to require a fresh spurt of litigation for the recovery of emoluments which necessarily flow from the quashing of the termination order or the grant of the declaratory decree.

13. Particularly in this context it calls for notice that in *Krishan Murari Lal's case,* the direction had been given by their Lordships not even at the appellate stage when they decided to allow the appeals on the 9th of February, 1977, but indeed it was so done in a miscellaneous petition No. 10572 preferred more than a year later in 1978. Now if such a direction can be given even years after the conclusion of the appellate proceedings I am unable to see why it cannot and should not be incorporated in the appellate or the original judgment itself and indeed it seems to be more appropriate that it should be so.

14. Once a direction of the aforesaid nature is given, it was not seriously disputed before us, that the same would be plainly executable. There is by way of analogy the seal of the final Court itself for such a view. In a similar context it was observed as follows in *Donald Graham & Co.* v. *Kewalram and others,* (13).

> "* * *. The decree in itself is not declaratory as it directs the principle judgment-debtor to pay a sum of Rs. 49,000 odd and this is the decree which the decree-holder now wishes to execute. There is nothing declaratory about it. It is true that, in a certain view of the matter, further proceedings might be necessary to ascertain what set of the respondent was entitled to against the decree in the adjustment, but that does not make the decree a declaratory decree."

Similarly relying on the earlier Madras view it was observed as follows in *Nawab Qutbuddin Khan* v. *Nawabzada Sardar Sadullah Khan,* (14).

> "* * *. It was held by the Madras High Court in a case reported as *Thyagarajaswami Devasthanam Tiruvalur* v. *Balayee Ammal,* (15) that although certain parts of a

(13) AIR 1921 Sind 132
(14) AIR 1937 Peshawar 62.
(15) AIR 1928 Mad 61.

decree might be declaratory in nature, where there were express directions to perform certain duties, such as the payment of money either at a point of time or periodically, such directions were meant to be enforced in execution. In my opinion the same principle should be applied to this case."

Finally in *Parkash Chand Khurana etc.* v. *Harnam Singh and others,* (16), Chandrachud J. (as the learned the Chief Justice then was) speaking for the Court has observed as follows :—

"The next contention of the appellants is that the award is merely declaratory of the rights of the parties and is therefore inexecutable. This contention is based on the wording of clause 7 of the award which provides that on the happening of certain events the respondents 'shall be entitled to take back the possession'. We are unable to appreciate how this clause makes the award merely declaratory. It is never a pre-condition of the executability of a decree that it must provide expressly that the party entitled to a relief under it must file an execution application for obtaining that relief. The tenor of the award shows that the arbitrator did not intend merely to declare the rights of the parties."

In view of the above there seems to be no manner of doubt that a direction once given (subject, of course, to any defence that may be raised to the claim for emoluments) would be plainly executable.

15. Primarily because of the binding precedent in *Krishan Murari Lal Singh's case* and equally because of larger principle the answer to the question posed at the outset is rendered in the affirmative.

16. Both the cases would now go back before the learned Single Judge for decision on merits in the light of the above.

J. V. Gupta, J.—I agree.

G. C. Mittal, J.—So do I.

N.K.S.

(16) AIR 1973 S.C. 2065.