REVISIONAL CIVIL

Before Inder Dev Dua, J.

BALMOKAND LAL MALIK,—*Petitioner*

versus

UNION OF INDIA,—*Respondent.*

Civil Revision No. 425-D of 1958.

1960

August.' 9th

Code of Civil Procedure (V of 1908)—Order VI, Rule 17—Power to amend pleadings—Scope of—Suit for recovery of gratuity held incompetent—Amendment of the plaint sought to plead that plaintiff was entitled to death-cum-retirement gratuity in addition to the reduced pension—Amendment—Whether should be allowed.

Held, that all amendments of the pleading should be allowed which are necessary for the purpose of determining the real question in controversy between the parties and which do not work injustice to the opposite party. The amendments are to be refused only where the other party cannot be placed in the same position as if the pleadings had been originally corrected and the amendment would cause him an injury which could not be compensated by costs. Where a plaintiff seeks to amend his pleadings by setting up a fresh claim in respect of a cause of action which has become barred by time the amendment can certainly be legitimately refused.

Held, that merely because the Court has given a finding, on a preliminary issue relating to the incompetency of the suit with respect to gratuity, does not by itself exclude the applicability of Order VI, rule 17 or of section 151 of the Code of Civil Procedure. The position can by no means be worse than if the plaintiff had not included the claim for gratuity in his suit and had later prayed for adding, by means of amendment in the plaint, a prayer for claim to death-cum-retirement gratuity. In those circumstances the Court could not decline to consider the prayer for amendment on the merits. The suit is undoubtedly, in actual fact, pending with respect to the other reliefs and it is not possible to hold, by means of artificial fiction, that

the suit should be deemed to consist of more than one suit, one of which should be deemed to have been dismissed. In this connection it has to be borne in mind that rules of procedure, being only a channel to administer the law, are meant to subserve and not to govern and that their primary object is to advance and promote the cause of justice and not to obstruct or throttle investigation into the disputes of suitors. There is little reason why Courts should feel hide-bound by matters which concern form and not substance, they being primarily concerned to see that rules of law and procedure serve to secure justice between the parties.

Petition under section 115, Civil Procedure Code, for revision of the order of Shri Gian Chand Jain, Subordinate Judge, 1st Class, Delhi, dated 12th May, 1958, holding that the suit for gratuity is not maintainable.

Claim : Suit for declaration that the petitioner was entitled to Rs. 274.44 nP., as pension and decree for Rs. 1,682.56 nP., including Rs. 712, as gratuity.

GYAN SINGH VOHRA, ADVOCATE, for the Petitioner.
R. S. NARULA, ADVOCATE, for the Respondent.

ORDER

DUA, J.—This judgment will dispose of C. R. No. 425-D of 1958 and C.R. No. 426-D of 1958, which arise out of the same dispute. Dua, J.

2. Shri Balmokand Lal Malik, the present petitioner before me, joined as an apprentice overseer in the North-Western Railway on 26th July, 1922, and was confirmed as an overseer about a year later. He retired on 30th November, 1952, and was allowed a pension of Rs. 256.12 nP. per mensem.

The suit out of which hese revisions have arisen arisen was instituted by him for a declaration that he was entitled to pension at Rs. 274.44 nP. p.m.

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instead of the amount of pension allowed and also prayed for a decree for Rs. 1,682.56 nP. His case was that for the purpose of evaluating the pension one year's period of apprenticeship under training should also have been counted and that on this basis the plaintiff was entitled to the higher pension claimed. It was, in addition, averred that the plaintiff suffered a loss of Rs. 970.56 nP. on account of pension up to 31st March, 1957, as a result of the difference in the amount claimed and the amount allowed. The plaintiff also pleaded that as a result of exclusion of one year's period of apprenticeship, the gratuity allowed to him also resulted in a loss of about Rs. 712 which he was entitled to claim.

3. The defendant, Union of India, resisted the suit on various grounds, one of the grounds being that the General Manager, Northern Railway, could not be made liable for this claim, the second ground being that the suit for recovery of gratuity was incompetent and the third one being that the suit was time-barred. The pleas with respect to the maintainability of the suit against the General Manager and the one relating to limitation do not concern us in the present proceedings because on a statement having been made by the counsel for the plaintiff the suit against defendant No. 2 was actually dismissed and the issue arising out of the plea with respect to limitation, as agreed by the counsel for both the parties, was left over to be decided along with the issues on the merits. The Court below upheld the plea with respect to the incompetency of the suit for recovery of gratuity holding that gratuity is a matter in the discretion of the Government and cannot be claimed as of right. As a result of this finding, the learned Subordinate Judge, on 12th May, 1958, adjourned the case, for framing issues on the merits of the remaining claim, to 19th May, 1958. It is this order

of 12th May, 1958, which is the subject-matter of C. R. No. 425-D of 1958.

4. It appears that when the Court held the suit for gratuity to be incompetent the plaintiff filed an application under Order VI rule 17 and Section 151 of the Code of Civil Procedure for permission to amend the plaint. The amendment sought by the plaintiff was to make out a case that the plaintiff was entitled to death-cum-retirement gratuity in addition to the reduced pension. This application was also resisted by the Union of India the principal objection being that the plaintiff by means of this amendment was seeking to change the entire nature and basis of his claim to avoid statutory bar to the maintenance of the suit; in the alternative it was also alleged that the claim for gratuity having already been dismissed by the Court, no amendment of the plaint relating to such claim could be allowed. The Court below agreeing with the defendant's contention that the suit for gratuity having been held to be incompetent the order of the Court dated 12th of May, 1958, which amounted to dismissal of the plaintiff's claim regarding gratuity, was a bar to any amendment being allowed regarding that claim. I may here mention that the plaintiff had also claimed an amendment in another respect which the trial Court duly allowed after rejecting the opposition of the defendant to that amendment. Naturally, therefore, we are not concerned with the amendment allowed and which has not been re-agitated before me at the bar.

On behalf of the plaintiff, in the Court below it was contended that as the suit was still pending, the amendment could be allowed but this plea was negatived by the Court principally on the ground that a particular claim having been disallowed no

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amendment with respect to that claim was permissible. This order which was passed on 7th August, 1958, is the subject-matter of C. R. No. 426-D of 1958.

5. Dealing first with the earlier revision, the learned counsel for the petitioner has contended that the petitioner wanted to lead evidence on the point that the claim with respect to gratuity was not gratuitous but was claimable as of right. This contention has not been substantiated before me by the learned counsel in any other manner, except by mere assertion that he could have proved, by leading evidence, that this claim was not as a matter of grace or on the sweet will of the Government but was due to the plaintiff as of right. In this connection it is not disputed that no opportunity for adducing any evidence was claimed in the Court below and in deed nothing substantial has been urged before me as to what type of evidence could be led by the plaintiff to substantiate his contention. A reference was made to some of the rules of he Indian Railways Establishment Code but the counsel was not able to point out any rule which in clear language conferred a right on his client to enforce his claim to gratuity through the municipal Courts. In the view that I have taken of the matter, it is hardly necessary to refer in detail to the following three authorities on which reliance was placed by the counsel. *Leslie Williams* v. *Haines Thomas Giddy* (1), is a Privy Counsel decision from the Supreme Court of New South Wales. This decision merely lays down that where a public servant on his retirement from service becomes entitled to a certain gratuity calculated on the average of his salary payable to him on retirement after the commencement of the Public Ser-

(1) XI I.C. 509.

vice Act, 1903, the Public Service Board could not arbitrarily deal with his claim for gratuity but must exercise their discretion reasonably, fairly and justly. In the reported case, the conduct of the Public Service Board was held to be a colourable performance in the guise of exercising discretion and, therefore, it amounted to a refusal by the Board to exercise the discretion entrusted to them by law. It is not possible for me to get any help from this decision because it has really proceeded on a certain foreign statute about which the counsel said nothing as to whether or not its provisions were analogous or similar to the provisions under which the petitioner is claiming his relief. As has often been said, it is most dangerous to rely on decisions of foreign Courts which deal with their own statutes and decide disputes in their own context. *Secretary of State* v. *Bhola Nath Mitra* (1), is also of no assistance to the petitioner. If anything, some of its observations go against the petitioner inasmuch as it clearly says that the gratuity is something of the nature of a gift and, therefore, rule 8 of the Gratuity Rules does not impose any legal liability on the Railway Administration to pay any gratuity to the employee nor does it confer on him any right which he can lawfully demand. *Shree Meenakshi Mills, Ltd.*, v. *Their Workmen* (2), has no relevancy to the point which I am called upon to decide.

6. For the reasons given above, I entirely agree with the reasoning and conclusion of the trial Court and dismiss C. R. No. 425-D of 1958. I would, however, not like to burden the petitioner with costs of these proceedings.

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(1) A.I.R. 1933 Cal. 409.
(2) A.I.R. 1958 S.C. 153.

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7. Coming now to C. R. No. 426-D of 1958, the learned Subordinate Judge has, in my opinion, acted with material irregularity in holding that merely because the finding with respect to the incompetency of a suit for gratuity has been given, the suit should be deemed to have been dismissed and that the Court should be deemed to be incompetent to allow any amendment. Merely because the Court has given a finding, on a preliminary issue relating to the incompetency of the suit with respect to gratuity, does not, in my opinion, by itself exclude the applicability of Order VI, rule 17 or of Section 151 of the Code of Civil Procedure. The position can by no means be worse than if the plaintiff had not included the claim for gratuity in his suit and had later prayed for adding, by means of amendment in the plaint, a prayer for claim to death-cum-retirement gratuity. It is difdifficult to understand how in those circumstances the Court could have declined to consider the prayer for amendment on the merits. The suit is undoubtedly, in actual fact, pending with respect to the other reliefs and I find it very difficult to persuade myself to hold, by means of artificial fiction, that the suit should be deemed to consist of more than one suit, one of which should be deemed to have been dismissed. It is not contended before me that the order of the Court below, dated 12th May, 1958, by itself, in any way, operates as a bar to the amended claim. In this connection, it has to be borne in mind that rules of procedure, being only a channel to administer the law, are meant to subserve and not to govern and that their primary object is to advance and promote the cause of justice and not to obstruct or throttle investigation into the disputes of suitors. There is little reason why Courts should feel hide-bound by matters, which concern form

and not substance, they being primarily concerned to see that rules of law and procedure serve to secure justice between the parties.

8. In so far as the scope of power to amend pleadings is concerned, it has been authoritatively laid down by high authority that all amendments should be allowed which are necessary for the purpose of determining the real question in controversy between the parties and which do not work injustice to the opposite party. The amendments are to be refused only where the other party cannot be placed in the same position as if the pleadings had been originally corrected and the amendment would cause him an injury which could not be compensated by costs. Where a plaintiff seeks to amend his pleading by setting up a fresh claim in respect of a cause of action which has become barred by time, the amendment can certainly be legitimately refused but before me no argument was addressed on this aspect of the case and it was not contended that the amended claim was barred by time on the date when the amendment was sought.

9. In view of what has been stated above, in my opinion, the learned Subordinate Judge, acted with material irregularity in the exercise of jurisdiction in refusing to allow the amendment claimed. I would, therefore, allow this petition and setting aside the order of the learned Subordinate Judge, dated 7th August, 1958, in so far as the amended claim was disallowed, direct that the same be allowed, but on the condition that the plaintiff pays a sum of Rs. 30, by way of costs to the defendant. In so far as the proceedings in this Court, are concerned, the parties are directed to bear their own costs.

B.R.T.