

(7) We are in respectful agreement with the view taken by the Madras High Court in *Janki's case* (supra) and hold that the compensation in the hands of the legal heirs of the deceased is not an estate of the deceased, and, therefore, cannot be attached by a decree-holder in execution of a decree against the deceased.

(8) Consequently, the revision petition fails and is dismissed. However, there will be no order as to costs.

P.C.G.

Before : G. R. Majithia, J.

BHIM SINGH,—Appellant.

versus

STATE OF HARYANA,—Respondent.

Regular Second Appeal No. 1558 of 1978.

3rd September, 1990.

Constitution of India, 1950—Art. 14—Limitation Act (XXXVI of 1963)—Art. 58—Petitioner warned for remaining absent—Subsequent orders for break in service passed after 7 years at his back—Order violative of principles of natural justice and double jeopardy—Setting aside of void order—No limitation is required.

Held, that the order was passed without affording an opportunity of hearing to the petitioner. Even if the period during which the plaintiff had remained absent from duty had to be treated as break in service, this could only be done after giving an opportunity of hearing to the plaintiff and it was all the more necessary when for the lapse he had already been punished. An employee cannot be punished twice over for the same lapse. As observed earlier, the Deputy Commissioner had already directed that the plaintiff should be administered a warning for remaining absent from duty without leave and an entry to that effect be made in the Amalnama. There was absolutely no justification for the Deputy Commissioner to direct that the period for which the plaintiff had remained absent from duty be treated as a break in service after the expiry of more than 7 years. The order was passed in violation of the principles of natural justice and is also bad for the reason that for the same lapse an employee cannot be punished twice over. It is a settled proposition of law that an order passed in violation of principles

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of natural justice is a void order. Superannuation pension is not a bounty and is not given as a matter of grace. It is a right to property and a government employee cannot be deprived of this right save by legislation which, too, have to satisfy the test of Article 14 of the Constitution.

(Para 4)

Held, that the Appellate Court taking resort to the provisions of Article 58 of the Limitation Act held that the suit for declaration was beyond limitation. The Appellate Judge did not draw a distinction between void and voidable order. If the order was void the rigour of the provisions of Article 58 of the Limitation Act will not be attracted. An order passed in breach of the rules of natural justice was totally invalid and, therefore, is of no legal existence. It was, therefore, not necessary for the plaintiff to have that order set aside by the Court. A just claim of a citizen cannot be denied on technical grounds. The State cannot defeat the claim of a citizen by taking the technical plea that the suit was beyond limitation.

(Para 5)

Regular Second appeal from the decree of the Court of Shri J. K. Sud HCS, Senior Sub Judge with enhanced appellate powers, Sirsa dated the 16th day of May 1978 affirming that of Shri R. P. Bajaj, HCS, Sub Judge 1st Class Sirsa dated the 13th June, 1977, dismissing the suit of the plaintiff, and leaving the parties to bear their own costs.

Claim : For declaration that the order dated 4th April, 1968 passed by the Collector Hissar and conveyed by the Sub Divisional Officer, Hissar on 24th February, 1969 whereby the plaintiff was informed that because of break in service from 20th July, 1960 to 4th January, 1961 he was not entitled to any pension, is illegal, void, arbitrary, unconstitutional and without jurisdiction and that the plaintiff is entitled to all the benefits including pension etc. on his retirement; On the basis of documentary and oral and evidence.

Claim in Appeal : For reversal of the order of Lower Appellate Court.

N. K. Kapur, Advocate, for the Petitioner.

Rameshwar Malik, Advocate, for the Respondent.

JUDGMENT

G. R. Majithia, J.

(1) This regular Second Appeal is directed against the judgment and decree of the first Appellate Court affirming on appeal those of the trial judge, whereby, the suit of the plaintiff for a declaration

that the order as conveyed to him by Sub-Divisional Officer (C) Hissar,—*vide* Endorsement No. 1957-58/SDHR, dated February, 24, 1969 was void, was dismissed.

(2) The facts:—

The appellant (hereinafter referred to as the plaintiff) who was employed as a Patwari in the revenue department, retired from service on August 4, 1967 on attaining the age of superannuation. He was informed by Sub-Divisional Officer (C), Hissar,—*vide* Endorsement No. 1957-58/SDHR, dated February 24, 1969 that since he had wilfully remained absent from duty from July 20, 1960 to January 4, 1961 for more than six months, this period will be deemed to be break in service and he was not entitled to pension. The order was challenged in the civil suit on the ground that he was transferred from the consolidation department to Panniwala Mota circle on July 16, 1960. He was not allowed to join duty at his new place of posting. He was charge-sheeted and after enquiry a warning was administered to him for remaining absent without leave. The subsequent order by which the period during which he remained absent was treated as a break in service was without any notice to him. The respondent controverted the pleas made in the plaint.

(3) From the pleadings of the parties, the following issues were framed :—

1. Whether the alleged break in service is bad for the reasons stated in para No. 4 of the plaint ? OPP
2. Whether the order, dated 24th February, 1969 is illegal, without jurisdiction and not binding upon the plaintiff ? If so, to what effect ? OPP
3. Whether the suit is within limitation ? OPP
4. Whether the civil court at Sirsa has no jurisdiction to try this suit ? OPD
5. Whether the suit is not maintainable in the present form ? OPD
6. Whether the plaintiff is estopped from filing the suit ? OPD
7. Relief.

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(4) The trial Judge found that the order dated April 4, 1968 *ex. D-2,—vide* which it was directed that the period during which the plaintiff had remained absent from duty should be treated as a break in service and no pension be allowed to him, was passed without affording an opportunity of hearing to him. Issue No. 2 was held redundant in view of finding under issue No. 1. Issues Nos. 4, 5 and 6 were answered against the respondent/defendant and in favour of the plaintiff. However, issue No. 3 was answered against the plaintiff and it was held that the suit was beyond limitation. Before the first Appellate Court, the findings recorded by the trial Judge under issues No. 1, 4, 5 and 6 were not assailed. Only the finding under issue No. 3 was challenged. The first Appellate Court concurred with the conclusion of the trial Judge and held that the suit was beyond limitation. The plaintiff remained absent from duty from July 20, 1960 to January 4, 1961. The charge-sheet was served upon him. An enquiry was held by Tehsildar Sirsa. Deputy Commissioner, Hissar awarded the following punishment :—

“Let him be warned and an entry be recorded in the amalnama.”

The plaintiff had been awarded the punishment for wilfully remaining absent from duty. After his retirement, a letter was received from the Accountant General to the Deputy Commissioner, Hissar. This letter pertained to the grant of pension and gratuity to the plaintiff. In para No. 3 of the letter, it was pointed out that the plaintiff remained absent from duty from July 20, 1960 to January 4, 1961 and the period has been treated as break in service. The official is not entitled to the benefit of past service. Consequently, he loses all his claim of the service rendered prior to July, 1960. On receipt of this letter, a note was put that affidavit be obtained from the plaintiff and then the case be put up with the comments. On April 3, 1968, the Assistant Superintendent Revenue appended a note that affidavit of the plaintiff is not required as his absence stood proved from S.D.O.'s letter No. 1951/SDS/BC, dated March, 25, 1968 and on April 3, 1968, the following note was appended :

“As has been reported above the Patwari does not deserve any sympathy for wilful absence. Therefore it is requested that the period of absence which is more than 6 months may be treated as break in service and no pension should be allowed to him.”

The Deputy Commissioner accepted the note. The entire noting is contained in Ex. D-2. The plaintiff remained absent from duty and for that lapse punishment had already been awarded to him on April 25, 1961 by the Deputy Commissioner, Hisar. On receipt of the communication from the Accountant-General, the case was processed in the office of the Deputy Commissioner, Hisar and it is that at this juncture that he ordered that the period of absence from duty be treated as break in service. The order was passed without affording an opportunity of hearing to the petitioner. Even if the period during which the plaintiff had remained absent from duty had to be treated as break in service, this could only be done after giving an opportunity of hearing to the plaintiff and it was all the more necessary when for the lapse he had already been punished. An employee cannot be punished twice over for the same lapse. As observed earlier, the Deputy Commissioner had already directed that the plaintiff should be administered a warning for remaining absent from duty without leave and an entry to that effect be made in the *Amalnama*. There was absolutely no justification for the Deputy Commissioner to direct that the period for which the plaintiff had remained absent from duty be treated as a break in service after the expiry of more than 7 years. The order contained in Ex. D-2 was passed in violation of the principles of natural justice and is also bad for the reason that for the same lapse an employee cannot be punished twice over. It is a settled proposition of law that an order passed in violation of principles of natural justice is a void order. Superannuation pension is not a bounty and is not given as a matter of grace. It is a right to property and a government employee cannot be deprived of this right save by legislation which, too, have to satisfy the test of Article 14 of the Constitution (see *Kesar Chand vs. State of Punjab and others*, 1982 (2) Punjab Law Reporter 223). The plaintiff could not be deprived of his claim for pension.

(5) The Appellate Court taking resort to the provisions of Article 58 of the Limitation Act held that the suit for declaration was beyond limitation. The Appellate Judge did not draw a distinction between void and voidable order. If the order was void the rigour of the provisions of Article 58 of the Limitation Act will not be attracted. I have already held in the earlier part of this judgment that the order contained in Ex. D-2 denying the claim of pension to the plaintiff is a void order. An order passed in breach of the rules of natural justice was totally invalid and, therefore, is of no legal existence. It was, therefore, not necessary for the plaintiff to

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have that order set aside by the Court. (See in this connection *Amrik Singh Constable vs. State of Punjab*, 1980 (2) SLR 616). A just claim of a citizen cannot be denied technical grounds. The State cannot defeat the claim of a citizen by taking the technical plea that the suit was beyond limitation. The decision under issue No. 3 is reversed. The appeal succeeds. The suit of the plaintiff is decreed. The judgments and decrees of the courts below are set aside and the order dated February 24, 1969 of Sub-Divisional Officer (C), Hissar as conveyed to the plaintiff,—*vide* endorsement No. 1957-58/SDHR Ex. P-1 is quashed. The plaintiff is entitled to the declaration sought for. The respondent is directed to release the arrears of pension upto date under the rules with interest at the rate of 12 per cent per annum from the date when the right to receive pension accrued till payment within three months from the date of receipt of this order.

P.C.G.

Before : I. S. Tiwana & G. R. Majithia, JJ.

RAJINDER GILL (MS.), PRINCIPAL,—*Petitioner.*

versus

DEV SAMAJ COUNCIL SOCIETY AND OTHERS,—*Respondents.*

Amended Civil Writ Petition No. 99 of 1985.

13th September, 1990.

Limitation Act 1963—S. 14—Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974—Ss. 3 & 4—Resignation of Principal challenged by her under Ss. 3 & 4—Jurisdiction—Director has no jurisdiction—Limitation—Time spent in litigation excluded.

Held, that the proceedings before the Director and before the Additional District Judge were wholly outside the ambit of the Act and he should have dismissed the case on that ground or directed the petitioner to seek her relief through a Court of competent jurisdiction. See 1980(3) SLR 527 (*D.A.V. College Managing Committee v. Addl. District Judge, Hoshiarpur and others*). Even Mr. V. K. Bali, learned senior counsel for the respondent has nothing to say to the contrary so far as this aspect of the matter is concerned. We are, therefore, of the firm opinion that the proceedings before the Director and the Additional District Judge were totally without jurisdiction, as the provisions of the Act were not at all attracted to the facts of this case.

(Para 5)