the other partners. The reconstituted firm can carry on its business in the same firm name till dissolution (see in this connection Commissioner of Income-tax, West Bengal v. Messrs, A. W. Figgis & Co. and others (1). It is not necessary to see as to how many partners were in the firm when the cause of action arose. It is only at the time of the institution of the suit that one has to find out if the firm is registered, who its partners are, and whether the names of all of them have been mentioned in the register of firms.

The result is that this petition fails and is dismissed, but with no order as to costs.

(1) A.I.R. 1953 S.C. 455.

B. R. T.

APPELLATE CIVIL

Before Daya Krishan Mahajan and R. S. Narula, JJ.

THE STATE OF PUNJAB,—*Appellant*

versus

ANAND SARUP SINGH,—*Respondent*

Regular First Appeal No. 453 of 1966

May 8, 1967.

Limitation Act (IX of 1908)—Articles 120 and 131—Government servant removed from service in 1949 by a void order and superannuated in 1955—Suit for recovery of pension for six years prior to the date of suit by him—Whether within time.

Held, that the limitation will start running as soon as a void order is enforced, though a void order has no existence in law and need not be set aside. But if in consequence of a void order, a person is removed from office, he cannot sit at home, if he wants not to forego the benefits which the void order, after enforcement, deprives him of. In the instant case, the void order was enforced in 1949 and the plaintiff was thrown out of office. No salary was paid to him and no work was taken from him. He sat at home for nearly sixteen years and after having superannuated for nearly six years he thought of the present suit. In these circumstances, it is idle to suggest that the present suit is not barred by limitation merely because the plaintiff need not sue to set aside the order. He can sit at home and just ignore it; bu if he wants any assistance of the Court by a suit, he has to come to Court within limitation, prescribed for a suit according to the nature of the relief claimed. Unless it is declared that the plaintiff continued to be in service in spite of the order of dismissal, the reliefs, which the plaintiff claims, will not accrue to him. The Court can only grant him the relief if it holds that the plaintiff continued in service. By merely ignoring the

order, the plaintiff cannot get over the bar of limitation because it is axiomatic that for every suit, the period of limitation is prescribed by the Limitation Act. The only difference is in the terminus *a quo*. Regarding each type of suit the period of limitation is perscribed and if there is no particular Article governing a suit, the suit has to be brought within the period prescribed by the residuary Articles. It is another matter that the order being void, the Government can accept the plaintiff's demand. But when the plaintiff comes to Court to enforce those demands, he must come within the period of limitation prescribed for the suit. It is no doubt true that he need not get the order of dismissal set aside, the order being void. But all the same, he will have to get a declaration from the Court that the order being void, he has continued in service and therefore, is entitled to all the benefits of that service, including the benefits of pension. He cannot, by cleverly wording the plain, side-track the question of limitation.

First Appeal from the decree of the Court of Sub-Judge 1st Class (D), Patiala, dated the 31st day of May, 1966, granting the plaintiff a decree for the recovery of Rs. 19,391.69 Paise as arrears of pension from 25th August, 1959 to 24th October, 1965, and further awarding the plaintiff interest thereon at the rate of Rs. 6.00 per cent per annum amounting to Rs. 3,568.67 Paise and allowing proportionate costs of the suit, and further ordering that the plaintiff would get future interest on the sum of Rs. 19,391.69 Paise at the rate of 6 per cent per annum from the date of decree till realization and further granting the plaintiff a decree for pension from 24th October, 1965 till 31st May, 1966 at the rate of Rs. 262.05 Paise, but the plaintiff would pay the Court fee on the sum of Rs. 1,893.52 Paise and granting a period of two months' time under section 82, C.P.C., during which the decree would be satisfied.

J. N. KAUSHAL, ADVOCATE-GENERAL (PUNJAB) WITH M. R. AGNIHOTRI, ADVOCATE, for the Appellants.

SUKHDEV SINGH AND I. K. MEHTA, ADVOCATE, for the Respondents.

JUDGEMENT

MAHAJAN, J.—The learned Advocate-General has only raised the question of limitation in this appeal; and that is the only question that we are called upon to determine.

The plaintiff, who was, at the relevant time, District Nazim in the erstwhile State of Patiala, was removed from service on the 20th of January, 1949. An enquiry against him was conducted by the Chief Justice of Patiala State and on the basis of the report of the Chief Justice, the order of removal was passed. It is common ground that no show-cause notice was issued. A parallel provision

to Article 311 of the Constitution of India existed in the Patiala State in Ordinance No. 1 of 2005 Bk. It is not disputed that the provisions of that Ordinance were not compiled with and the order of removal is bad. However, the plaintiff took no steps to question that order and superannuated on 29th September, 1955. On the 25th of October, 1965, he brought the present suit for recovery of Rs. 20,831.74 P. as arrears of pension from 25th of August, 1959 to the 24th of October, 1965, that is, up to the date of the suit. Future pension was claimed from 24th of October, 1965 to 31st of May, 1966—the date of the decree. Interest and future interest at the rate of six per cent has been claimed. The suit was contesed by the State of Punjab because, in the meantime, the princely States had merged in the Indian Union. By reason of this merger, a Union of States was formed known as the Patiala and East Punjab States Union. This Union also came to an end by its merger with the State of Punjab; and that is why the suit has been filed against the State of Punjab. It is not necessary to advert to all the pleas raised by the State of Punjab. Suffice it to say that the State of Punjab, *inter alia*, pleaded that he suit was barred by limitation. The trial Court held the suit to be within time on the ground that the order of removal was nullity because (i) no show-cause notice had been given to the plaintiff! and (ii) that the report of the Enquiry Officer was not furnished to the plaintiff. In this view of the matter, the plaintiff's suit has been decreed for a sum of Rs. 19,391.69 P. as pension for the period—25th of August, 1959 to 24th of October, 1965; and on this amount, interest has been decreed amounting to Rs. 3,568.67 P. at the rate of six per cent. In addition to this, a decree for Rs. 1,893.52 P. has been passed for the period—24th of October, 1965 to 31st of May, 1966. The State of Punjab is dissatisfied with this decision and has come up in appeal to this Court.

The learned Advocate-General's contention is that the trial Court was in error in holding that the plaintiff's suit is within limitation. It is urged that the plaintiff was removed from service on the 21st of January, 1949; and till it is declared that the plaintiff continued to be in the service of the State of Punjab or its predecessor, he will not be entitled to any relief, His claim for such a declaration is barred by time both under Article 120 and Article 131. In support of his contention, that Article 120 of the Limitation Act applies, the learned Advocate-General has placed his reliance on the decisions in *Abdul Vakil* v. *Secretary of State an another* (1),

(1) A.I.R. 1943 Oudh, 368.

Jagdish Prasad Mathur and others v. *United Provinces Government* (2), *Ranjit Kumar Chakravarty* v. *State of West Bengal* (3) and *The State of Andhra Pradesh* v. *Shaik Sabhanuddin* (4). And in support of his contention that even if longer period of limitation under Article 131 is held to be available to the plaintiff, the suit is still barred. In this connection, reliance has been placed on the decision in *Hakim Hidayat Ullah and others* v. *Gopal Chand and another* (5). It is also pointed out by Mr. J. N. Kaushal, that the bar of limitation cannot be avoided by wording the plaint in such a manner as to bring the suit under a different Article of the Limitation Act, under which it would come on a true interpretation of the nature of the suit.

Mr. Sodhi, who appears for the respondent, in the first instance, raised the contention that no plea was taken in the written statement that a suit for declaration was necessary and, in the second instance, has raised the contention that in the Grounds of Appeal, no such prayer has been made. It is further maintained that the order of removal being void, it has no existence and the plaintiff continued in service and is entitled to all the benefits that flow from his having continued in service.

In our opinion, the raising of the plea of limitation is a complete answer to the objection of the learned counsel. The other facts are fully brought on the record: and the question is—

> "Can the plaintiff succeed without the declaraion that he continued in service, as the order of removal was void?"

In paragragh 18 of the plaint, the plaintiff has stated that—

> "* * The orders of removal No. 14, dated 20th January, 1949, passed against the plaintiff by His Highness the Rajpramukh are illegal, void *ab initio*, inoperative unconstitutional, *mala fide* and a mere nullity and notwithstanding these orders, the plaintiff continued in the service of the State, enjoying all arrears of his salary, allowances, increments, all rights and privileges accruing to him right upto the date of his superannuation, viz., 28th September, 1955, and to a monthly pension of Rs. 281.51 nP. from 29th September, 1955 A.D. till his demise * * * * *".

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(2) A.I.R. 197 All. 114.
(3) A.I.R 1958 Cal. 551.
(4) A.I.R. 1965 Andh. Prad. 188.
(5) A.I.R. 1937 All. 57.

In paragraph 25, it is stated that—

> "* * As the order of removal passed against the plaintiff is a nullity, so it is being ignored and so the suit of the plaintiff for the recovery of arrears of his pension is within limitation."

In the prayer clause, which is set out in paragraph 27 of the plaint, only various amounts, as detailed earlier, are claimed. The question remains whether by cleverly wording the plaint, a party can avoid the bar of limitation? Unless it is declared that the plaintiff continued to be in service inspite of the order of dismissal, the reliefs, which the plaintiff claims, will not accrue to him. That is precisely the reason why in paragraph 18, the plaintiff claims that he continued to be in service in spite of the order of removal which is void. Can the plaintiff then, without seeking a declaration that he continued in service, claim the relief for which he has brought the present suit ? The Court can only grant him the relief if it holds that the plaintiff continued in service. By merely ignoring the order, the plaintiff cannot get over the bar of limitaton because it is axiomatic that for every suit, the period of limitation is prescribed by the Limitation Act. The only difference is in the terminus *a quo*. Regarding each type of suit the period of limitation is prescribed and if there is no particular Article governing a suit, the suit has to be brought within the period prescribed by the residuary Articles. It is another matter that the order being void, the Government can accept the plaintiff's demand. But when the plaintiff comes to Court to enforce those demands, he must come within the period of limitation prescribed for the suit. It is no doubt true that he need not get the order of dismissal set aside, the order being void. But all the same, he will have to get a declaration from the Court that the order being void, he has continued in service; and, therefore, is entitled to all the benefits of that service, including the benefits of pension. He cannot, by cleverly wording the plaint, sidertrack the question of limitation. So far as this Court is concerned, there is a Full Bench decision in *Gangu and others* v. *Mahanraj Chand and others* (6), wherein the observations of Le Rossignol, J. in *Kaura* v. *Ram Chand* (7), were approved. Those observations are quoted below for facility of reference:—

> "A litigant merely by attaching a label to his suit cannot bring it under a different Article of the Limitation Act from

(6) A.I.R. 1934 Lahore 384 (F.B.).

(7) A.I.R. 1955 Lahore 285.

that under which it would come on a true interpretation of the nature of the suit."

The Court can only come to the assistance of the plaintiff if it declares that the plaintiff continued to be in service; the order dismissing him being void. Therefore, there is substance in the contention of the learned Advocate-General that the suit would be governed either by Article 120 or by Article 131. The plaintiff's right to continue in service was negatived, though by a void order. There was a complete refusal on the part of the State to recognize the plaintiff as its employee; and, therefore, it became incumbent upon the plaintiff to seek a declaration that in spite of that refusal, he continued to be an employee. He could no dobut ignore a void order and need not pray for setting it aside, but the refusal to recognize him as an employee having taken place once for all, he has to obtain a declaration and for that matter, the period of limitation has to be reckoned either under Article 120 or Article 131. The shorter period of limitation prescribed by Article 120 finished in 1955 and the longer period of limitation prescribed by Article 131 finished in 1961. The suit, which has been filed in 1965, is, therefore, clearly barred by time and we see no escape from this conclusion. What has been said above, finds support from the decision of the Allahabad High Court in *Hakim Hidayat Ullah's case*. That decision was given under Article 131. But the reasoning of that decision equally applies to Article 120 as well. Whichever Article applies, the suit, as already said, is barred by time. For facility of reference, the observations in *Hakim Hidayat Ullah's case* are set out below:—

"Where the suit is purely for recovery of arrears of rent, Article 110 would be applicable and claim for more than three years would be barred by time. On the other hand, if the suit is brought merely for declaration that the "plaintiff possesses a periodically recurring right to get the rent from the defendants, then the suit would certainly be governed by Article 131 and would be barred by time if there had been refusal of the enjoyment of the right more than 12 years before the suit. But where the plaintiff in the case where there had been such refusal, more than 12 years before the suit, brings a suit for recovery of the arrears of rent without asking expressly for a declaration of his right to recover rent, he will not be allowed to evade the provisions of Article 131 by merely not asking for an express relief for a declaration of right. A plaintiff is not

> entitled to recover arrears of rent without in the first place establishing his right to recover it if such a right is denied. Therefore, where such a right is denied a claim for recovery of rent necessarily involves as conditions precedent the establishment of the plaintiff's right to recover rent irrespective of the question whether an express relief for such a declaration is asked for or not:"

Mr. Sodhi places his reliance upon the decision of the Supreme Court in *The State of Madhya Pradesh* v. *Syed Qamarali,* Civil Appeal No. 284 of 1960, decided on the 8th of March, 1961, for the contention that it is not necessary to seek any declaration. He strongly relies upon the observations at page 5 of the blue print which are quoted *in extenso,*—

> "We, therefore, hold that the order of dismissal having been made in breach of a mandatory provision of the rules subject to which only the power of punishment under section 7 could be exercised, is totally invalid. The order of dismissal had therefore no legal existence and it was not necessary for the respondent to have the order set aside by a court. The defence of limitation which was based only on the contention that the order had to be set aside by a court before it became invalid must therefore be rejected."

If these observations go to indicate that there is no period of limitation for a relief which is sought on the basis that a void or illegal order has no existence in law, the argument of the learned counsel would be unanswerable that the present suit is within limitation. But the learned counsel admits that for every suit, there is a period of limitation prescribed in the Limitation Act and all suits have to be filed within the period so prescribed. According to the learned counsel, his right to pension accrued when he attained the age of 55. The order of dismissal being void, he continued to be in service; and as suit is within six years of his attaining the age of 55, the suit for pension is within time. In our opinon, this conclusion does not follow from the decision of the Supreme Court. To understand the decision of the Supreme Court, it is necessary to briefly refer to the facts, on which the decision was given. The order of dismissal was passed in the year 1945. It was confirmed in appeal in the year 1947; and the suit was filed on the 8th December, 1952, that is, within six years of 1947 and beyond six years of 1945. The contention of the

State was that the plaintiff could not get any relief without the order of dismissal being set aside and for that purpose, reliance was placed on Article 14 of the Limitation Act. The trial Court held that the order of dismissal was legal and the suit brought more than six years of the order of dismissal (that is 1945), was barred under Article 120 of the Limitation Act under which provision a suit had to be brought within six years of the order of dismissal. On appeal by the plaintiff, the District Judge agreed with the trial Court that the order of dismissal was valid and that if the order was void, the suit would not be barred by time. In second appeal, the High Court was of the view that the order was void and that the suit was not barred by time. The State appealed to the Supreme Court and regarding limitation, the following contention was urged:—

> "That the order of dismissal, even if void, remained valid untill and unless an order was obtained from a competent Court setting aside the same and so no relief in respect of salary could be granted when the time for obtaining an order setting aside the order of dismissal had elapsed whether the period of limitation for such a suit be under Article 14 or article 120 of the Limitation Act."

This contention was negatived because the period, from which limitation had to be reckoned, was taken as the year 1947; and the suit filed on the 8th December, 1952, was within limitation. Moreover, their Lordships were very careful in their observations, while rejecting the contention of limitation as would appear from the following observations:—

> "* * The defence of limitation was based only on the contention that the order had to be set aside by a Court before it became invalid."

This clearly shows that before the Supreme Court, the question of limitation was agitated only on the basis of Article 14, inasmuch as the suit was not barred by time under Article 120.

It appears to us to be preposterous to hold that a Government servant, who is, as in the instant case, thrown out of office in the year 1949, can just sit at home and superannuate and bring a suit for pension nearly after sixteen years. When the plaintiff comes to Court, he comes to Court because he wants a declaration that he is still in

service. His right to his salary or pension will flow from such a declaration. There is no escape from this conclusion. To such a declaration, as rightly urged by Mr. J. N. Kaushal, the period of limitation is provided by Article 120 of the Limitation Act; and, in any case, by Article 131, as already noticed in the contention of Mr Kaushal. It is not disputed that if these Articles apply, the suit is clearly barred by time. The view, we have taken of the matter, finds support from the decision of the Privy Council in *Laxmanrao Madhavrao Jahagirdar* v. *Shriniwas Lingo Nadgir and others* (8), and the decision of the Orissa High Court in *Chintamoni Padhan and others* v. *Paika Samal and others* (9). It was observed by their Lordships of the Privy Council in *Laxmanraos' case* that—

> "If the order was illegal, the plaintiff was not bound to file a suit to set it aside, but was entitled to wait until it was enforced against him, and the attempt to enforce it against him gave him a good cause of action which was admittedly within time."

This clearly indicates that the limitation wilt start running as soon as a void order is enforced, though a void order has no existence in law and need not be set aside. But if in consequence of a void order, a person is removed from office, he cannot sit at home, if he wants not to forego the benefits which the void order, after enforcement, deprives him of. In the instant case, the void order was enforced in 1949 and the plaintiff was thrown out of office. No salary was paid to him and no work was taken from him. He sat at home for nearly sixteen years and after having superannuated for nearly six years, he thought of the present suit. In these circumstances, it is idle to suggest that the present suit is not barred by limitation merely because the plaintiff need not sue to set aside the order. As already observed, he can sit at home and just ignore it; but if he wants any assistance of the Court by a suit, he has to come to Court within limitation, prescribed for a suit according to the nature of the relief claimed. Mr. Sodhi has only tried to meet these objections by saying that he is fully covered by the decision of the Supreme Court and by the decision of this Court in *S. Gurdip Singh* v. *Union of India and another* (10), wherein it was held that a suit to recover pension is competent. The question of limitation did not arise in the last case and was not settled.

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(8) A.I.R. 1927 P.C. 217.
(9) A.I.R. 1956 Orissa 136.
(10) A.I.R. 1962 Punj. 8.

After carefully considering all the aspects of the matter, we are clearly of the view that the present suit is barred by limitation and the trial Court was in error in holding the same to be within limitation.

The result, therefore, is that this appeal is allowed; the judgment and the decree of the trial Court is set aside and the plaintiff's suit is dismissed. In the circumstances of the case, however, there will be no order as to costs throughout.

NARULA, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before Daya Krishan Mahajan, J.

BHAG SINGH—*Appellant*

versus

DAN SINGH AND OTHERS,—*Respondents*

Regular Second Appeal No. 1619 of 1963.

May 9, 1967

Transfer of Property Act (IV of 1882)—S. 6(e)—Right to mesne profits—Whether transferable.

Held, that the transfer of a right to recover mesne profits is hit by section 6(e) of the Transfer of Property Act and the transferee cannot bring an action to recover them.

Second Appeal from the decree of the Court of the District Judge, Bhatinda, dated the 14th day of August, 1963, reversing that of the Sub-Judge, 1st Class, Bhatinda, dated the 28th February, 1963, and dismissing the plaintiff's suit and leaving the parties to bear their own costs.

ATMA RAM, ADVOCATE, for the Appellants.

NEMO for the Respondents.