JAI CHAND SAWHNEY

v.

UNION OF INDIA

October 31, 1969

[J. C. SHAH AND K. S. HEGDE, JJ.]

Limitation Act (9 *of* 1908), *Art.* 102—*Applicability to Government Servants—Order of dismissal of Government servant set aside—Salary of such servant when 'accrues due' under the article.*

The appellant, a railway employee, was dismissed from service on October 13, 1949. On October 13, 1955, he filed a suit, against the respondent, for setting aside the order of dismissal and for arrears of salary. The order of dismissal was set aside on the ground of failure to afford the constitutional protection provided under s. 240 of the Government of India Act, 1935.

On the question of the period for which he was entitled to arrears of salary,

HELD : A suit by a servant of the Crown for arrears of salary is governed by Ar,. 162 of the Indian Limitation Act, 1908. [223 F]

Shri Madhav Laxman Vaikunthe v. *The State of Mysore.* [1962] 1 S.C.R. 886, followed.

The period of limitation under Art. 102 is 3 years, and commences to run when the salary *accrues due.* The salary accrues due when, in law, the servant becomes entitled to it. [224 C-D]

In the present case, when the order of dismissal was set aside, the appellant was deemed to be in service throughout the period during which the order of dismissal remained operative. Therefore the appellant's right to sue for his salary arose at the end of every month in which he was unlawfully prevented from earning it. Hence, his claim for salary for the period prior to 3 years from the date of the suit was barred. Rule 2042 of the Railway Establishment Code which provides that the pay and allowances of a dismissed railway servant cease from the date of dismissal does not operate to make the salary *accrue due* on the date of the institution of the suit for setting aside the order of dismissal. [224 D-F]

In computing the period of limitation the period of statutory notice of two months should be excluded under s. 15 of the Limitation Act. Therefore, the appellant was entitled to salary for three years and two months prior to the data of the suit. [224G-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 561 of 1967.

Appeal by special leave from the judgment and decree dated May 22, 1962 of the Punjab High Court, Circuit Bench at Delhi in Regular First appeal No. 92-D of 1959.

B. C. Misra, Urmila Kapoor and *B. Ram Rakhiani,* for the appellant.

Jagadish Swarup, Solicitor-General and *S. P. Nayar,* for the respondent.

A

The Judgment of the Court was delivered by

Shah, J.—Jai Chand Sawhney—hereinafter called 'the plaintiff'—was removed from service under the East Punjab Railway, by order dated October 13, 1949. He sued the Union of India in the Court of the Subordinate Judge, Hissar, for setting aside the
B order of removal on the grounds—(i) that the order was made by an authority subordinate to the appointing authority; and (ii) that he was not given an opportunity to show cause against the action proposed to be taken in regard to him as required by s. 240 of the Government of India Act, 1935. The plaintiff also claimed a decree for Rs. 20,399/9/- being the amount of arrears of salary
C and damages for wrongful termination of employment. The Trial Court declared that the dismissal was "illegal and void", and decreed the claim for Rs. 9,335-35 for arrears of salary.

Against the decree passed by the Trial Court the plaintiff and the Union of India appealed to the High Court of Punjab. The plaintiff's appeal was dismissed. The Union's appeal was also dis-
D missed. The plaintiff was awarded arrears of salary for three years prior to the date of the suit. With special leave, the plaintiff has appealed to this Court.

It was held by the Federal Court in *The Punjab Province* v. *Pandit Tarachand*(1) that the expression "wages" in Article 102 in the Schedule to the Limitation Act includes salary, and there-
E fore a suit by a servant of the Crown for arrears of salary is governed by Art. 102 of the Indian Limitation Act. That view was reiterated by this Court in *Shri Madhav Laxman Vaikunthe* v. *The State of Mysore*,(2) it was held that the claim in a suit for arrears of salary due to a servant of the State who was reverted to his substantive rank is governed by Art. 102 of the Indian
F Limitation Act.

Counsel for the plaintiff contended that the period of three years under Art. 102 commences to run from the date on which the order of dismissal is set aside, either by a departmental authority or by the Civil Court in a suit or other proceeding. Counsel also contended that the cause of action in a suit by a dismissed
G employee arises on the date of the institution of the suit, if the Court sets aside the order of dismissal or removal. In support of his contention counsel relied upon a judgment of the Madras High Court in *State of Madras* v. *A. V. Anantharaman*.(3) In that case the Madras High Court observed that the pay and allowances of a public servant dismissed or removed from service cease from the date of such dismissal or removal and his right to recover the
H arrears arises because of Fundamental Rule 52 not before the date

(1) [1947] F.C.R. 89. (2) [1962] 1 S.C.R. 886.
(3) I.L.R. [1963] Mad. 1014.

on which the result of the subsequent proceeding setting aside the dismissal or removal is declared. Counsel for the plaintiff says that the terms of Fundamental Rule 52 are the same as the terms of r. 2042 of the Railway Establishment Code, and according to the principle of the judgment of the Madras High Court the plaintiff's right to sue must be deemed to have accrued on the date on which the suit was instituted. In our judgment, the contention cannot be accepted. When the order of dismissal or removal is set aside by the Court on the ground of failure to afford the constitutional protection, the order is declared invalid *ab initio, i.e.* as if it in law never existed, and the public servant concerned was unlawfully prevented from rendering service. If that be the correct view, salary due to the public servant concerned must be deemed to have accrued month after month because he had been wrongfully prevented from rendering service. The period of limitation under Art. 102 commences to run when the wages "accrue due", and wages accrue due when in law the servant becomes entitled to wages. Rule 2042 of the Railway Establishment Code merely provides that "the pay and allowances of a railway servant who is removed or dismissed from service cease from the date of the order of removal or dismissal". That rule does not operate to make the wages accrue due on the date of the institution of the suit. If the order of dismissal is set aside the public servant is deemed to be in service throughout the period during which the order of dismissal remained operative, and his right to sue for salary arises at the end of every month in which he was unlawfully prevented from earning the salary which he could. but for the illegal order of dismissal, have earned.

The High Court was, in our judgment, right in holding that the plaintiff's claim was governed by Art. 102 of the Limitation Act, that the remuneration payable to him accrued due month after month, and that the plaintiff's claim for salary beyond the period provided by the third column of Art. 102 was barred by the law of limitation.

A slight modification must, however, be made in the decree of the High Court. Under s. 15 of the Indian Limitation Act, 1908, where a statutory notice has to be served by the plaintiff before instituting any action, in computing the period of limitation, the period of the notice in accordance with the requirements of the enactment must be excluded. There is no doubt that the plaintiff had given such a notice. He was, therefore, entitled to salary for three years and two months prior to the date of the suit.

Subject to that modification, the appeal is dismissed. There will be no order as to costs.

V.P.S. *Appeal dismissed.*