

UNION OF INDIA AND ORS.

v.

NANDLAL RAIGAR

APRIL 16, 1996

[K. RAMASWAMY AND S.P. BHARUCHA, JJ.]

*Service Law :*

*Dismissal from service for fabrication of record—Suit filed by employee for a declaration that the order of dismissal was illegal—Limitation—Would run from the date of dismissal—Delinquent employee not availing the remedy within the limitation period—Not open to him to challenge that the order was in violation of the Rules—Nor could he ignore the order and then file the suit at any time of his pleasure—Limitation Act, 1963—Article 113.*

*State of Madhya Pradesh v. Syed Qamarali, [1967] SLR 228; held inapplicable.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2914 of 1986.

From the Judgment and order dated 11.12.85 of the Rajasthan High Court in S.A. No. 117 of 1985.

K.R. Choudhary, C.V. Subba Rao and Y.P. Mahanjan for the appellants.

M.A. Krishna Moorthy for the Respondent.

The following Order of the Court was delivered :

The respondent, while working as Accountant in the Telephones Department in Rajasthan was charged for fabrication of record and was dismissed from service on May 9, 1973. After dismissal of the departmental appeals, he laid the suit in 1980 seeking declaration that the order of his dismissal was illegal. The appellants have taken, apart from others, limitation as one of the objections. The trial judge while dismissing the suit on the ground of limitation, had recorded the findings that enquiry contemplated under the Rules was not properly conducted and that, therefore,

A his dismissal from service was not correct in law. The respondent carried the matter in appeal. The appellate Court set aside the order which was confirmed in the second appeal. Thus this appeal by special leave.

B The only question is : whether the suit is within limitation? Article 113 of the Limitation Act, 1963 prescribes three years when the right to sue accrues for the purpose of enforcing the right. Since the right to sue had accrued to the respondent on May 9, 1973 and the date of dismissal of the departmental appeal is August 26, 1974, the later date would provide limitation and would be considered to be the date from which the running of the limitation began, viz., August 26, 1974. Once the limitation starts running its due course, on expiry of three years from that date, the right to seek remedy to the respondent is lost. The High Court has upheld the judgment of the appellate Court on the finding that from the inception the order of dismissal was not made in accordance with law and as the respondent had not filed any cross-objection against those findings recorded by the trial Court, it would not be open to him to object to the decree for reinstatement. We find no force in the reasoning of the High Court or the appellate Court. It is true that this Court in *State of Madhya Pradesh v. Syed Qamarali*, [1967] SLR 228, had held in paragraph 20, relied upon by learned counsel for the respondent, that once the order of dismissal is found to have no legal existence, it was not necessary for the respondent to have the orders set aside by a court. It would be seen that in that case the respondent was prosecuted for the offence and he was acquitted on merits. The order of dismissal was founded upon the very same misconduct which was subject-matter of the prosecution. Since the respondent therein was acquitted on merits, there was no foundation for dismissal of the respondent from service. Under those circumstances, the order was considered to be non-existent and, therefore, it was held that he was not required to file a separate suit for setting aside the order of dismissal. The ratio of the said decision has no application to the facts in a case where the departmental enquiry was conducted and he was found to have committed misconduct as provided under the rules. The limitation, therefore, would begin to run from the date of dismissal from service. If the dismissed delinquent employee does not avail of the remedy by impugning the order of dismissal within limitation, then it would not be open to him to challenge in the suit that the order of dismissal is in violation of the Rules, that he could ignore the order and then file the suit at any time at his pleasure. If that contention is given acceptance, startling consequen-

ces would follow. Under these circumstances, this Court did not intend to lay down that even in a case of dismissal after due enquiry and where the Order is allowed to become final, it would be ignored by the delinquent employee and contended that the limitation does not stand as a bar to him. Moreover, the interpretation given by this Court is based upon paragraph 241 of the Police Regulations. The ratio therein would be considered to be applicable to the facts in that case. A B

The appeal is accordingly allowed, but, in the circumstances, without costs.

Since pursuant to the interim directions given by this Court the respondent has been reinstated, the salary paid to him during his continuance in service is directed not to be recovered. C