

STATE OF TRIPURA & ORS.

v.

ARABINDA CHAKRABORTY & ORS.
(Civil Appeal No.1322 of 2007)

APRIL 21, 2014

[ANIL R. DAVE AND VIKRAMAJIT SEN, JJ.]

Limitation:

Suit – Period of limitation – Services of plaintiff terminated for remaining unauthorisedly absent – Given a fresh appointment on purely temporary basis – Suit filed after 12 years claiming seniority from the date of initial appointment and claiming limitation from the date of rejection of his last representation – Held: Period of limitation would commence from the date on which cause of action takes place – Simply by making a representation, when there is no statutory provision or there is no statutory appeal provided, period of limitation would not get extended – Law does not permit extension of period of limitation by mere filing of a representation – Period of limitation would not commence from the date on which the last representation is decided – In the instant case, there was no provision with regard to any statutory appeal – Respondent kept on making representations one after another and all the representations were rejected – Courts below committed an error by considering the date of rejection of last representation as the date on which cause of action had arisen – Orders of courts below are set aside – Suit stands dismissed – Service law.

Service Law:

Seniority – Initial appointment terminated for employee being unauthorisedly absent - Subsequently employee given fresh appointment on temporary basis – Claim for seniority

A *from initial employment – Held: Services of respondent in his first employment having been terminated because of his unauthorised absence, there could not have been any question with regard to continuity of service with effect from first employment.*

B Respondent no. 1, on his appointment as Librarian, joined his duties on 12.9.1964. From 1.8.1966 to 20.9.1967 respondent no. 1 remained unauthorisedly absent and, therefore, his services were terminated. However, he was given a fresh appointment as Librarian, by order dated
C 22.11.1967, on purely temporary basis. Respondent no. 1 made a representation to count his seniority from the date of his initial appointment as Librarian in 1964. The said representation was rejected in 1973. The final seniority list was published in 1975 in which the service
D of respondent no. 1 was shown to have commenced from 22.11.1967 as per fresh appointment. Respondent no. 1 continued unsuccessfully to make representations and ultimately filed a title suit in 1979. The appellant-employer contested the suit stating that the suit having
E been filed after more than 13 years from the date of joining the service in 1967, was barrèd by limitation. The suit was decreed and the employer’s first appeal and second appeal were dismissed.

F Allowing the appeal, the Court

HELD: 1.1. Simply by making a representation, when there is no statutory provision or there is no statutory appeal provided, the period of limitation would not get extended. The law does not permit extension of period
G of limitation by mere filing of a representation. Nor would the period of limitation commence from the date on which the last representation is decided. [Para 10] [288-C-D]

H 1.2. In the instant case, the suit was hopelessly barred by law of limitation. It is a fact that services of the

respondent in his first employment had been terminated because of his unauthorised absence and he was given a fresh appointment order on 22.11.1967 and, therefore, there could not have been any question with regard to continuity of service with effect from the first employment. The respondent did not make any representation or grievance when he was given a fresh appointment. He knew it well that his services had been terminated and he was obliged by the appellatant authorities by giving him a fresh appointment. Even after the draft seniority list was published on 11.11.1972 and was finalized in September, 1975, the respondent did not file any suit but continued to make representations which were rejected throughout. [Para 10-12] [288-D-F, 289-C-E]

1.3. It is a settled legal position that the period of limitation would commence from the date on which the cause of action takes place. Had there been any statute giving right of appeal to the respondent and if the respondent had filed such a statutory appeal, the period of limitation would have commenced from the date when the statutory appeal was decided. In the instant case, there was no provision with regard to any statutory appeal. The respondent kept on making representations one after another and all the representations were rejected. It cannot be accepted that the period of limitation would commence from the date on which the last representation was rejected. The courts below committed an error by considering the date of rejection of the last representation as the date on which the cause of action had arisen. This could not have been done. The order of the High Court confirming the orders passed by the first appellate court and the trial court is set aside. The suit stands dismissed. [Para 13-14] [289-E-H; 290-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1322 of 2007.

A From the Judgment & Order dated 17.03.2006 of the High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh at Agartala (Agartala Bench) in S.A. No. 20 of 1998.

B Rituraj Biswas, Gopal Singh for the Appellants.

Avijit Bhattacharjee for the Respondents.

The Judgment of the Court was delivered by

C **ANIL R. DAVE, J.** 1. Being aggrieved by the judgment delivered in RSA No. 20 of 1998 by the High Court of Gauhati at Agartala on 17th March, 2006, the State of Tripura and others-employers of respondent no.1 have filed this appeal.

D 2. The facts giving rise to the present appeal, in a nutshell are as under:

E Respondent No. 1 had been appointed as a librarian by the Directorate of Education, Government of Tripura by an order dated 04.09.1964 and he had joined his duties at Birchandra Public Library, Agartala on 12.09.1964.

F While in service, he was sent to Banaras Hindu University, Varanasi to undergo further education and to get qualification of Bachelor of Library Science during the academic year 1965-66. After completion of his studies, he had resumed his duties on 27.07.1966. Thereafter, the respondent-employee had remained absent without any intimation or sanctioned leave for about one year i.e. from 01.08.1966 to 20.09.1967. During his absence from service, by letter dated 13.08.1966, the respondent had been called upon to report at the place of his duty within seven days, failing which his service was to be terminated. In spite of the said notice dated 13.08.1966, the respondent did not report at the place of his work and therefore, a Memorandum dated 14.11.1966 had been issued to the respondent calling upon him to resume his duties, but as the
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H respondent had not resumed his duties, his services had been

terminated. It was learnt subsequently that during the period when he had remained unauthorisedly absent, he had undergone further studies and had attained degree of Masters in Library Science and after attaining the said qualification, he had once again approached the concerned authorities for his re-appointment. Looking at the fact that the respondent had become better qualified, he was given a fresh appointment by an order dated 22.11.1967 on purely temporary basis as a librarian and again he was posted at Birchandra Public Library, Agartala, Tripura.

Though the respondent knew it well that by virtue of an order dated 22.11.1967, he was given a fresh appointment on purely temporary basis as a librarian and he had lost his earlier seniority, he made a representation for his seniority in service from the day on which he was initially appointed as a librarian in 1964. The representation made by the respondent was rejected on 31.08.1973. It is also pertinent to note that a draft seniority list of Librarians was published on 11.11.1972 and thereafter, the said draft list was finalized and the final seniority list was published on 24.09.1975. In the said seniority list it was clearly shown that service of the respondent had commenced from 22.11.1967 in pursuance of his fresh appointment.

In spite of the aforesaid fact, the respondent continued to make representations and all his representations were rejected. Ultimately the respondent filed Title Suit No. 175 of 1979 on 19.09.1979 in the Court of Munsif, Sadar, West Tripura, praying for the aforesaid reliefs. In the said suit, the respondent had referred to all the representations made by him and had also stated that reply to his last representation was given on 15.1.1979 and therefore, the suit was filed within the period of limitation.

In the written statement, the employer-appellant had taken a specific stand with regard to limitation to the effect that the respondent had filed the suit after more than 13 years because he had joined his service in September, 1967 and he wanted,

A by virtue of the prayer in the suit, that he should be deemed to have been appointed with effect from 12.08.1964

B The suit was decreed in favour of the respondent and therefore, the appellant employer filed Title Appeal No. 28 of 1985 against the judgment dated 18.04.1985 delivered by the trial court. The judgment delivered by the trial court was upheld by the appellate court and therefore, second appeal was filed before the High Court which was also dismissed by virtue of the impugned judgment.

C 3. The learned counsel appearing for the appellant-employer had submitted that the courts below had committed a mistake by believing that the suit was filed within the period of limitation. The trial court had expressed its view to the effect that the period of limitation would start from the date on which D last representation made by the respondent was decided. Therefore, the suit was treated to have been filed within the period of limitation and the said view was confirmed by both the appellate courts.

E 4. The learned counsel for the appellant had further submitted that on facts also, the courts below committed a mistake because the respondent had been given a fresh appointment by an order dated 22.11.1967. Initial appointment made in 1964 had already been terminated as the respondent had remained absent without sanctioned leave. He had further F submitted that upon perusal of the appointment order dated 22.11.1967, it is clear that the respondent had been given a fresh appointment as a librarian on temporary basis because his earlier appointment had already come to an end.

G 5. It had been further submitted that the respondent wanted continuity of service with effect from 12.08.1964 though his service had already been terminated as he had remained absent unauthorisedly. In the circumstances, the respondent had no right to have continuity of service. He had further submitted H that the respondent ought to have filed suit within 3 years from

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the date of order giving him fresh appointment if he was aggrieved by the said order. A

6. Alternatively, it had been submitted that the draft seniority list of Librarians had been published on 11.11.1972 which had been finalized on 24.09.1975 and the said fact was known to the respondent. The respondent was made aware of the fact that he was appointed with effect from 22.11.1967 and in that event the period of limitation would start from 11.11.1972 when the draft seniority list was published or at the most with effect from 24.09.1975 when the draft seniority list was finally published. Instead of approaching the court, the respondent kept on making several representations which had been rejected. His representation had been rejected on 19.07.1976. Even after rejection of his representation on 19.07.1976 he had made another representation on 16.02.1978 to the Director of Education, Tripura which had also been rejected on 03.06.1978. Thereafter, he made another representation to the Director of Education, which had also been rejected on 15.01.1979. B C D

7. Looking at the above facts, it had been submitted by the learned counsel appearing for the appellants that the title suit ought to have been dismissed on the ground of limitation, however, not only the suit had been decreed but the courts below had also confirmed the judgment delivered by the trial court. He had further submitted that the appeal deserved to be allowed with costs. E F

8. On the other hand, the learned counsel appearing for the respondent-employee had tried to support the judgments delivered by the High Court and the trial court. He had submitted that the period of limitation would start with effect from the date on which his representation was finally rejected by his employer and as the suit had been filed on 19.09.1979, the suit was filed within the period of limitation. G

9. As the respondent had attained degree of Masters in Library Science and he was taken back in service, his services H

A were rightly ordered to be continued by the trial court and the High Court had rightly confirmed the judgment and decree passed by the first appellate court. He had, therefore, submitted that the appeal filed in this Court deserved to be dismissed.

B 9. We had heard the learned counsel appearing for the parties and had also carefully gone through the relevant material pertaining to appointment orders and the representations made by the respondent.

C 10. In our opinion, the suit was hopelessly barred by law of limitation. Simply by making a representation, when there is no statutory provision or there is no statutory appeal provided, the period of limitation would not get extended. The law does not permit extension of period of limitation by mere filing of a representation. A person may go on making representations D for years and in such an event the period of limitation would not commence from the date on which the last representation is decided. In the instant case, it is a fact that the respondent was given a fresh appointment order on 22.11.1967, which is on record. The said appointment order gave a fresh E appointment to the respondent and therefore, there could not have been any question with regard to continuity of service with effect from the first employment of the respondent. It is pertinent to note that service of the respondent had been terminated because of his unauthorised absence. It was unfortunate that F the suit had been filed after 13 years and therefore, the relevant record pertaining to the order of termination of the respondent had been destroyed or could not be traced but in such an event, no harm should be caused to the appellant-employer because the appellant-employer was not supposed to keep the record G pertaining to the order terminating service of the respondent forever. Had the respondent filed the suit within the period of limitation i.e. within three years from the date when he was given a fresh appointment on 22.11.1967, possibly the Government could have placed on record an order whereby service of the respondent had been terminated. The respondent, after having H

additional qualification approached the concerned authority in the month of November, 1967 with a request for fresh appointment and therefore, by virtue of an order dated 22.11.1967 he was given a fresh appointment as a librarian. In fact there was no question of losing his seniority because he was given a fresh appointment by virtue of the order dated 22.11.1967.

11. The respondent did not make any representation or grievance when he was given a fresh appointment. He knew it well that his service had been terminated and he was obliged by the appellant authorities by giving him a fresh appointment. Had he been aggrieved by a fresh appointment after termination of his service, he should have taken legal action at that time but he accepted the fresh appointment and raised the grievance about his seniority and other things after more than a decade.

12. Even after the draft seniority list was published on 11.11.1972, which had been finalized in September, 1975, he did not file any suit but continued to make representations which had been rejected throughout.

13. It is a settled legal position that the period of limitation would commence from the date on which the cause of action takes place. Had there been any statute giving right of appeal to the respondent and if the respondent had filed such a statutory appeal, the period of limitation would have commenced from the date when the statutory appeal was decided. In the instant case, there was no provision with regard to any statutory appeal. The respondent kept on making representations one after another and all the representations had been rejected. Submission of the respondent to the effect that the period of limitation would commence from the date on which his last representation was rejected cannot be accepted. If accepted, it would be nothing but travesty of the law of limitation. One can go on making representations for 25 years

- A and in that event one cannot say that the period of limitation would commence when the last representation was decided. On this legal issue, we feel that the courts below committed an error by considering the date of rejection of the last representation as the date on which the cause of action had arisen. This could not have been done.
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14. We, therefore, quash and set aside the order of the High Court confirming the orders passed by the trial court as well as the first appellate court. As a result thereof, the suit stands dismissed. The appeal is allowed with no orders as to costs.
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Rajendra Prasad

Appeal allowed.