of Joint Director and even if the petitioner was not the senior-most he was surely entitled to be considered for the higher post as much as any other Deputy Director (Class I) was entitled to be considered under rule 9(b).

(8) In these circumstances, I would hold that the expression 'Deputy Directors (Class I)' in rule 9(b) of the State Rules includes all such officers in the service in question who fall in the said category, including Deputy Directors (Class I) recruited under clause (g) of rule 9 and not only those promoted from Class II under rule 9(a). The refusal of the Government to consider the petitioner at all amounts to denial of equal opportunity in the matter of one of his most important service conditions, i.e for promotion to the higher post, which fundamental right is guaranteed to every citizen under Article 16 of the Constitution. The impugned orders of the Government expressly refusing to consider the petitioner for promotion to the post of Additional Controller of Stores along with other eligible Deputy Directors (Class I) amounts to clear infringement of Article 16 of the Constitution. The appointment of respondent No. 3 to the said higher post without considering the claim of the petitioner is also illegal and contrary to rule 9(b). There is an apparent and glaring error of law in the wholly misconceived and almost impossible construction of rule 9(b) which found favour with the State.

(9) For the foregoing reasons this writ petition is allowed, the order of promotion of respondent No. 3 to the post of Additional Controller of Stores without considering the case of the petitioner is set aside and it is directed that the State shall now fill up the post in question after considering the rival merits-cum-seniority of the petitioner and respondent No. 3. [The other Deputy Directors (Class I) have already been considered and excluded in favour of respondent No. 3). The petitioner shall be entitled to recover his costs incurred in this case from respondent No. 1.

K. S. K.

FULL BENCH

Before D. K. Mahajan, Shamsher Bahadur and R. S. Narula, JJ.

JAGDISH MITTER,—*Petitioner*

versus

THE UNION OF INDIA AND ANOTHER,—*Respondent*

Civil Writ No. 2307 of 1965

February 28, 1969

Limitation Act (IX of 1908)—Art. 102— Order of dismissal of a Government servant—Such order held to be void—Claim of arrears of salary—Whether

confined to period of three years before suit or proceedings—Government servant—Whether can claim arrears of salary for the entrie period of his remaining out of employment—Constitution of India (1950)—*Art.* 226—*Writ petition raising triable issue of limitation—High Court—Whether should issue* mandamus.

Held, that if an order of dismissal of a Government servant is in breach of mandatory provision and is found by the Courts to be void and in operative, it becomes totally invalid. In the eyes of law, such an order ceases to have any existence and the period of dismissal in consequence must be regarded as a period for which the dismissed employee must be deemed to be in service. This legal fiction of the non-existence of the order of dismissal gives rise to another fiction about his continued accrual of wage or salary dues during the period of dismissal. In fact the sweep and amplitude of the legal fiction that the employee should be deemed to be in service all along will have the effect of preventing payment of arrears in respect of a period beyond three years when actually the employee was doing nothing for the Government. However, ethical consideration of fairness and equity are hardly relevant or germane in determining the strict and technical rules of limitation. When the *terminus a quo* is the time when the wages accrue and by a legal fiction the entire period of removal or dismissal is deemed to be one spent in actual service, it is legitimate to give full meaning and content to the words in the third column of article 102 of the Indian Limitation Act. Hence the period of limitation for the claim of arrears of salary of a dismissed Government servant whose dismissal has been declared to be void by the Courts, starts not from the date of the declaration but from the date the claim accrue due, irrespective of such declaration. The Government servant, therefore, after his dismissal or removal has been declared to be unlawful, can claim wages or salary only up to a period of three years from the date when the cause of action accrued before suit or proceedings. He cannot claim arrears for the entire period that he remained out of employment.

Held, that the High Court has, in exercise of its jurisdiction under Article 226 of the Constitution of India, power for the purpose of enforcement of fundamental rights and statutory rights to give consequential relief but the Court ought not ordinarily to lend its aid to a party by this extraordinary remedy of *mandamus* when the relief prayed for raises a triable issue of limitation in which case it would be best to leave the party to seek his remedy by the ordinary mode of action in a civil Court.

Case referred by the Hon'ble Mr. Justice P. D. Sharma on 15th February, 1967 to a Full Bench for decision of an important question of law involved in the case. The Full Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan, the Hon'ble Mr. Justice Shamsher Bahadur and the Hon'ble Mr. Justice R. S. Narula, after deciding on 28th February, 1969 the question referred to returned the case to the Single Judge, for final decision.

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of mandamus *or any other appropriate writ, order or direction be issued to the respondent to pay full salary and allowances admissible along with confirmation and promotion from due date.*

ABNASHA SINGH, ADVOCATE, for the Petitioner

J. L. GUPTA, ADVOCATE, for the Respondents.

JUDGMENT

SHAMSHER BAHADUR, J.—The question which has been referred to this Full Bench by the order of P. D. Sharma, J., of 15th of February, 1967, arises from two sets of Bench decisions of this Court in *K. K. Jaggia* v. *The State of Punjab* (1), *Union of India* v. *Maharaj* (2), decided by S. B. Capoor and H. R. Khanna, JJ., and the *State of Punjab* v. *Ram Singh Brar* (3), decided by Mahajan and Narula, JJ., on the one hand, and *Union of India* v. *Ram Nath* (4) (Dulat and S. K. Kapur, JJ), on the other, which though in conflict with each other purport to follow the same authority of the Supreme Court in *Madhav Laxman Vaikunthe* v. *The State of Mysore* (5). The impasse, which is sought to be resolved centres on the question whether a Government employee whose dismissal from service has been found to be void and unlawful can recover by a suit or proceeding filed in time his claim for arrears of salary in respect of the entire period when he remained out of employment or is limited only to a period of three years before the institution of the suit or proceeding?

(2) The facts with regard to the case in point may now be briefly narrated. The petitioner Jagdish Mitter, a temporary clerk in the office of the Post-Master General, Lahore, since 9th of October, 1946 was discharged from service on 1st of December, 1949. In a suit brought against the Union of India on 11th November, 1952, and dismissed by the trial Court on 22nd March, 1954, the lower appellate Court granted a decree in his favour on May 25, 1954, to the effect that the termination of his service was illegal being in contravention of the relevant Rules and Regulations. In a further appeal of

(1) I.L.R. (1966) 1 Punj. 302.
(2) R.F.A. 8 D of 1964 decided on 6th Sept., 1966.
(3) 1967(1) Services Law Reporter 594.
(4) I.L.R. (1966) 2 Punj. 907.
(5) (1962) I S.C.R. 886.

the Union of India, the suit was again dismissed by a Single Judge of the Punjab High Court (S. B. Capoor, J.), on 10th August, 1959, and the petitioner, though unsuccessful in his appeal before the Letters Patent Bench which dismissed it *in limine* on 19th August, 1960, eventually gained his point on 20th of September, 1963, before the Supreme Court in a judgment which is often cited as an authority on the question of wrongful dismissal, this being *Jagdish Mitter* v. *The Union of India* (6). According to the judgment of the Supreme Court, the decree passed in favour of Jagdish Mitter by the lower appellate Court was restored.

(3) In consequence of the decision of the Supreme Court, which declared that the petitioner was illegally dismissed from service "and that, therefore, he continues in service", the Director, Postal Services, on 2nd July, 1964, passed an order for reinstating him as a lower division clerk with effect from 1st December, 1949. It was further directed that the petitioner would be entitled to such of his pay and allowances for the period between 1st of December, 1949, when his services were terminated and 4th of October, 1963, when he was reinstated by virtue of the Supreme Court decision, as would be permissible under the law of limitation. The petitioner kept on agitating departmentally for the full benefits which he claimed should have accrued to him as a result of his ultimate success in the litigation, but his request was turned down on 6th of November, 1964, and was offered only three years' pay preceding the date of his reinstatement from which the sum which he had already drawn while temporarily employed was to be deducted. A notice under section 80 of the Code of Civil Procedure was then sent by the petitioner to the Government of India on 3rd of April, 1965, and the present writ petition under Articles 226 and 227 of the Constitution of India was filed on 21st August, 1965, praying that he should be deemed to be in service right from the date of termination of his service, i.e., 1st December, 1949, and that he should be paid arrears of salary for the entire period without deduction of the amount which he may have received while in service during that period. Mr. Abnasha Singh, counsel for the petitioner, further submits that some ancillary relief for proper adjustment of seniority has also to be spelled out from the relief claimed in the petition.

(4) Sharma, J., who heard the petition on 15th of February, 1967. naticed a conflict of judicial view regarding the question formulated aforesaid, and the matter has, therefore, been sent for the

(6) A.I.R. 1964 S.C. 449.

authoritative pronouncement of this Bench on the question whether after the cause of action is found to be in time, recovery can be effected for the entire period when the employee was under dismissal or suspension or up to a period of three years and two months in lieu of the notice.

(5) It is common ground that the time from which the period would begin to run is governed by article 102 of the Indian Limitation Act, 1908, which is to this effect:—

"Description of suit	Period of limitation	Time from which period begins to run
102. For wages not otherwise expressly provided for by this schedule	Three Years	When the wages accrue due"

(6) The claim of the petitioner is founded on a Division Bench judgment of Gurdev Singh, J., and myself in *Jaggia's case* (1), where in a writ petition it was held that the right to recover full pay and allowances for the period of interim suspension was to accrue to the aggrieved person from the date when the order of his dismissal was quashed and under artcile 102 of the Limitation Act, if the proceeding was brought within three years from that date, the entire amount of arrears during the period of wrongful suspension became due. Gurdev Singh, J., with whom I agreed, directed the respondent State of Punjab to "pay full salary and allowances admissible to the petitioner for the entire period between the dates of his first suspension and reinstatement, i.e., from 16th May, 1950 to 19th September 1963. after deducting the amount which the petitioner has already received as subsistence allowance for the period of his suspension prior to his dismissal."

(7) Reliance for this conclusion was sought from the Supreme Court authority in *Laxman Vaikunthe's case* (5), where a public servant reduced in rank on 11th August, 1940, continued in service and retired on superannuation on 29th of November, 1953. In a suit filed by the official against the Government of Bombay on 2nd of August, 1954, for a declaration that the order of reduction in rank passed on 11th August, 1948, was void, inopeartive and *ultra vires,*

as also for recovery of arrears of salary, allowances, etc., it was held that reduction in rank was unlawful but a decree in respect of three years' period from 2nd June, 1951, that is to say, three years plus two months for notice prior to the date of institution of the suit, was passed. The claim for arrears of salary prior to 2nd of June, 1951, was held to be barred by limitation. The decision of the Supreme Court was relied upon by the Bench in *Jaggia's* case for the proposition that in a suit to recover arrears of salary the provisions of article 102 of the Indian Limitation Act are applicable. It seems to me in retrospect that the observation made by the Bench in *Jaggia's* case that if the suit is within three years the entire arrears of wages or salary could be recovered when a public servant remained under wrongful suspension or dismissal, was not in accord with the relief granted by the Supreme Court in *Laxman Vaikunthe's* case. No doubt, their Lordships of the Supreme Court did not give any reasons for this conclusion, but it is manifest from the decree in respect of three years and two months passed by the Court that the claim if otherwise in time was to be restricted to this period.

(8) In *Laxman Vaikunthe's* case, the Supreme Court relied on a decision of the Federal Court in *Punjab Province* v. *Pandit Tarachand* (7), a decision to which reference was also made by Gurdev Singh, J., in *Jaggia's* case. Though the principal question in *Tarachand's* case related to the right of a servant of the Crown for arrears of salary and the decision of that Court that such a right was governed by article 102 of the Limitation Act and that the word 'wages' was wide enough to include 'salary', Zafrulla Khan, J., towards the end of the judgment made mention of the question of limitation which was raised by the counsel appearing for the contesting parties by the leave of the Court. At page 109 of the report, his Lordship observed:—

> "It is obvious that if this was a case of breach of contract there were successive breaches at the end of each month and the respondent would still be entitled to recover arrears of pay which fell due within a period of three years before the institution of the suit. On this being pointed out counsel conceded that that was so and the point was not further pressed."

(7) 1946 F.C.R. 89.

(9) The *ratio decidendi* of the Federal Court on the aspect of limitation clearly was that the right to recover wages or salary under article 102 was a continuing right and each successive breach gave right to a fresh cause of action. The legal consequence which flows from this conclusion is that recovery could be made in respect of dues for a period of three years only before the institution of the suit or proceedings, and such was the implicit assumption of their Lordships of the Supreme Court in *Laxman Vaikunthe's* case when the suit of the aggrieved official which was found to be in time was decreed only for a period of three years and two months.

(10) As observed by the Supreme Court in *State of Madhya Pradesh* v. *Syed Qamarali* (8), if an order of dismissal is made in breach of mandatory provisions and is found to be void and inoperative it becomes totally invalid and such an order of dismissal, in the words of Mr. Justice Das Gupta "had, therefore, no legal existence and it was not necessary for the respondent to have the order set aside by a Court". In the eyes of law, therefore, the order of dismissal ceases to have any existence and the period of dismissal in consequence must be regarded as a period for which the dismissed employee must be deemed to be in service. In short, the legal fiction itself regarding the non-existence of the order of dismissal gives rise to the other fiction about his continued accrual of wage or salary dues during the period of dismissal.

(11)Mr. Abnasha Singh, the learned counsel for the petitioners besides *Jaggia's case* has placed reliance on two other Bench decisions of this Court. In *Union of India* v. *Maharaj* (2), decided by a Circuit Bench of S. B. Capoor and H. R. Khanna, JJ., of this Court, Maharaj, an employee of the Military Secretary's Branch, General Head Quarters, Government of India, was dismissed from service with effect from 20th of May, 1947, and his suit for reinstatement in service though dismissed in the first instance, was decreed by the lower appellate Court. The Government's appeal was dismissed by the High Court on 25th March, 1955, and the application to file a letters patent appeal was further dismissed on 21st of September, 1956. The employee was in consequence reinstated in November, 1957. In a suit brought by the official for recovery of arrears a point was raised on behalf of the Government that he could not recover

(8) 1967(I) Services Law Reporter 228.

more than three years and two months' salary in consequence of the decision in *Laxman Vaikunthe's* case. The Bench observed that in the Supreme Court decision and the case before it, the essential difference was that the plaintiff before the Supreme Court had not been dismissed or discharged from service but had been reverted from his officiating to his substantive post, while Maharaj was actually dismissed from service. An observation was made that the pay and allowances of a Government servant, who is dismissed or removed from service cease from the date of "such dismissal or removal". As provided in Rule 52 of the Fundamental Rules, "the pay and allowances of a Government servant who is dismisesd, or removed from service cease from the date of such dismissal or removal". According to the Bench, the continuing breach, to which reference was made in *Tarachand's* case, ceased to be of any effective use in a case of removal or dismissal. As it would be necessary in such a case for the Government servant to have the order of dismissal or removal first set aside for suit for recovery of arrears, the claim should not be restricted to a period of three years and two months. In the words of the Court:—

> "It is, however, only by a legal fiction that the Government servant in such a case is deemed to have been in service all along, but the hard fact is that in consequence of the order of his dismissal the plaintiff was barred by Fundamental Rule 52 from making any claim to salary until he had the order of dismissal set aside by the Court. It would be absurd and futile to suggest that in the long interval while the litigation remained pending the plaintiff should have periodically filed suits for his salary."

(12) The answer to this argument is that a legal fiction having been employed for saying that an order of dismissal is non est and *non-existing* in the eye of law, if it is found to be wrongful and *ultra vires,* all the consequences flowing from it should be logically pursued and followed and one of such results is that the salary had accrued to the official who had been wrongfully dismissed. In a House of Lords case in *Tast and Dwellings Co. Ltd.* v. *Finsbury Borough Council* (9), Lord Asquith said thus at page 132:—

> "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so,

(9) (1952) A.C. 109.

also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it..... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

(13) No doubt, Lord Asquith was speaking of the legal fiction in the construction of a statute, but I do not see how the principle will not apply in the case of a legal fiction which has been employed by the highest Court of the land in the case of a wrongful order of dismissal. In fact, the sweep and amplitude of the legal fiction that the employee should be deemed to be in service all along will have the effect of preventing payment of arrears in respect of a period beyond three years when actually the employee was doing nothing for the Government. However, ethical consideration of fairness and equity are hardly relevant or germane in determining the strict and technical rules of limitation. When the *terminus a quo* is the time when the wages accrue and by a legal fiction the entire period of removal or dismissal is deemed to be one spent in actual service, it is legitimate to give full meaning and content to the words in the third column of article 102 of the Indian Limitation Act.

(14) The reason for distinguishing the case of *Maharaj* from that of the Supreme Court in *Vaikunthe's* case adduced by the learned Bench does not appear to us to be tenable. There is neither any reason nor principle in differentiating a case of reversion or reduction in rank from that of dismissal when the claim for wages or salary is founded on the wrongful act of dismissal or reversion. Moreover, *Tarachand's* case on which the decision of *Vaikunthe's* case is based made it clear about the continuing cause of action which subsisted for the claimant during the period of wrongful dismissal.

(15) Before referring to the third decision of this Court in favour of the petition, it may be useful to make mention of a Bench decision of the Madras High Court in *State of Madras* v. *Anantharaman* (10), in which also *Laxman Vaikunthe* and *Tarachand's* cases are discussed. In speaking of the fiction with regard to the period of wrongful dismissal, the learned Chief Jutice Ramachandra Ayyar observed at page 1018:—

"The fiction that a person who had been illegally dismissed continues to be in service, though one in law, is not a

(10) I.L.R. 1963 Mad. 1014.

statutory fiction to warrant the application of the rules stated above. Again the purpose of the fiction is merely to regard a public servant as if he had not been legally removed or dismissed. But that cannot necessarily justify the importation of another fiction, namely, that while he was in such fictitious service his salary also accrued every month. No principle of law warrants the second fiction."

(16) Relying also on Rule 52 of the Fundamental Rules. the Madras High Court held that in a case of dismissal of a public servant, his right to salary will accrue only when the order of dismissal has been set aside either by the departmental authorities or by a civil Court and claim made within three years from the date of order setting aside the dismissal must be held to be in time under article 102 of the Limitation Act. With respect, we consider that the judgment of the Madras High Court in *Anantharaman's* case, following another Division Bench judgment of Jagadisan and Kailasam, JJ., in *Union of India* v. *R. Akbar Sheriff* (11), is subject to the same attack and criticism as the Circuit Bench decision of this Court in *Maharaj's* case. In *Sheriff's* case, the learned Judges in holding that the claim, if in time, would cover the entire period of dismissal, said at page 495 about the Federal Court decision in *Tarachand's* case that "it cannot be that the salary of each month fell due to the beginning of next month on the facts of the present case. So long as the dismissal order was in force against the plaintiff he had no right to claim salary."

(17) The decision in the case of *Maharaj* was followed by a Bench of D. K. Mahajan and Narula, JJ., in *State of Punjab* v. *Ram Singh Brar* (3), in which reference was made to the Supreme Court decision in *Laxman Vaikunthe's case.* In that case, the plaintiff was retired compulsorily from service by the Government of Pepsu on 6th of September, 1948, and was reinstated by the order of the Government on 23rd of February, 1951. He kept on agitating for the arrears of salary and a suit was filed for recovery on 23rd April, 1957. Though the suit for arrears of salary was barred under article 102 of the Limitation Act having been filed more than three years after the date of reinstatement, it was observed at page 596 that:—

"So far as relief quo declaration is concerned, we may safely say that if the suit was within limitation, the plaintiff

(11) A.I.R. 1961 Mad. 486.

would be entitled to his salary from the 8th of September, 1948 to the 23rd of February, 1951. and for that purpose we need refer only to a Division Bench decision of this Court in *Union of India* v. *Maharaj* (2), decided by S. B. Capoor and H. R. Khanna, JJ."

(18) Thus, the Bench in the case of *Ram Singh Brar* affirmed unequivocally the principle which had been enunciated by S. B. Capoor and H. R. Khanna, JJ., in the case of *Maharaj.*

(19) The other point of view which we are inclined to accept being in accord with the decision of the Supreme Court in *Laxman Vaikunthe's* case was, expounded by the Circuit Bench of this Court of Dulat and S. K. Kapur, JJ., in *Union of India* v. *Ram Nath* (4), Ram Nath, an empolyee of the Posts and Telegraph Department, who remained under suspension from 9th April, 1946 to 18th January, 1952, was dismissed on 19th January, 1952, in consequence of a departmental enquiry. A suit was filed by him on 5th March, 1957, to challenge the order of dismissal and a substantial sum was claimed as arrears of his pay till 28th February, 1957. Both the reliefs of declaration that the dismissal was illegal and *ultra vires* and a decree for Rs. 24,430.65 on account of arrears of salary from 19th January, 1952, to 13th January, 1960, were granted by the trial Court. Both parties appealed and on behalf of the Union of India the only plea raised was that the decree could only be passed for a period of three years and two months, the rest of the claim being barred by time under article 102 of the Limitation Act. While discussing the case of *State of Madras* v. *Anantharaman* (10), which had distinguished the *Laxman Vaikunthe's* case on ground of applicability of Fundamental Rule 52, S. K. Kapur, J., speaking for the Court, observed that their Lordships of the Supreme Court had clearly laid down that "the period of limitation starts, not from the date of declaration by the court, but from the date it accrues due irrespective of such a declaration", this being implicit from the fact that the claim in *Laxman Vaikunthe's* case which was otherwise in time was allowed only from 2nd June, 1951, uptill the date of the plaintiff's retirement from Government service. If the order of dismissal is illegal, it must follow logically, in the view of Kapur, J., that Rule 52 of the Fundamental Rules, regarding which an argument was also raised before us by Mr. Abnasha Singh, never in the eyes of law came into operation. An order setting aside the dismissal cannot by its very nature alter the date of accrual of cause

of action. With regard to the argument which is pegged to Fundamental Rule 52, it may be mentioned that a similar contention with regard to Fundamental Rule 54, which enables the State Government of Uttar Pradesh to fix the pay of a public servant where dismissal is set aside in a departmental appeal, was raised before the Supreme Court and it was held in *Devendra Pratap Narain Rai Sharma* v. *State of Uttar Pradesh* (12), that Rule 54 had no application in cases "in which the dismissal of a public servant is declared invalid by a civil court and he is reinstated". On a parity of reasoning, it can acceptably be urged that the operation of Rule 52 of the Fundmental Rules will come to a stop and it will cease to have any force in the eye of law as observed by S. K. Kapur, J.

(20) We agree respectfully with the logic and reasoning of S. K. Kapur, J., and find that there is no escape from the conclusion that the Supreme Court in *Vaikunthe's* case had restricted the claim which was otherwise within limitation to a period of three years from the date of institution of the suit or proceeding. With regard to *Jaggia's case*, it was rightly observed by Kapur, J., that the point for decision only related to the question whether the suit was filed within time and the right to recover full pay and allowances for the period of employee's interim suspension accrued to him on the date when the order of dismissal was quashed by the competent Court.

(21) Mr. Jawahar Lal Gupta, the learned counsel for the respondent, has relied on various other decisions in support of the result reached by Dulat and Kapur, JJ., in *Ram Nath's* case. In *Union of India* v. *P. V. Jagannath* (13), a Division Bench of T. C. Shrivastava and G. P. Singh, JJ., while discussiong the entire case law on the subject, said that when an order of dismissal of a civil servant is declared void or inoperative, the declaration of the Court does not make the order void but merely declares or exposes the already existing infirmity in the order. Such an order of dismissal being ineffective from its inception, the civil servant continues in service in spite of the order and the cause of action for the salary, accrues every month. In that acse, the entire claim was found to relate to a period prior to three years and was held to be barred by time under article 102 of the Limitation Act.

(12) A.I.R. 1962 S.C. 1334.
(13) A.I.R. 1968 M.P. 204.

(22) The Bench of Chief Justice Narasimham and R. K. Das, J., of the Orissa High Court in *Syam Sunder Misra* v. *Municipal Chairman, Parlakimedi* (14), has taken a similar view, According to this decision, an employee who feels aggrieved by his dismissal from service by his employer has a right to sue not only for a declaration that his dismissal was wrongful, but also for the consequential relief for payment of arrears of wages and other emoluments. Chief Justice Narasimham in speaking for the Court, resolved the difficulty with which an aggrieved employee may be confronted by saying that proceedings for declaration and recovery of salary should be initiated by him simultaneously. Said he at page 112:—

> "He cannot obviously split up the two reliefs and sue for the former relief only, in view of the express prohibition contained in Order 2, Rule 2, Code of Civil Procedure, and section 42 of the Specific Relief Act. Limitation for both the reliefs would, therefore, run from the date on which the right to sue accrued to him, if, however, instead of filing a regular civil suit for these reliefs he seeks for an alternative remedy by a direct application to the High Court under Article 226 of the Constitution and does not pray for the consequential relief of arrears of salary, etc., he cannot urge that the right to ask for this latter relief accrued only after the date of the judgment of this Court in that writ application."

(23) The Bombay High Court in *State of Bombay* v. *Ganpat Dhondiba Sawant* (15), in a judgment of K. K. Desai and Palekar, JJ, observed that the Supreme Court in *Vaikunthe's* case had clearly held that the claim under article 102 of the Limitation Act could be confined only to the period of three years from the date of institution of the suit in case of arrears of salary in respect of the period of wrongful dismissal. The State appeal with regard to the decree passed in favour of the employee for Rs. 1701-5-0 was held to be barred by the law of Limitation on the ruling of the Supreme Court in *Vaikunthe's* case.

(24) Mr. Abnasha Singh strongly relied on a Single Bench judgment of Dhavan, J., in *Hari Raj Singh* v. *Sanchalak Panchayat*

(14) A.I.R. 1964 Orissa 111.
(15) A.I.R. 1966 Bom. 228.

Raj (16). What fell for decision by the Court in that case was the right of a civil servant on reinstatement to receive arrears of pay and allowances for the period of his absence from duty under Rule 54 of the Fundamental Rules. No doubt, the learned Judge said in that case that the State Government is not permitted to reject the claim on the ground that it is time-barred after a Government servant has been reinstated, it having been found that his dismissal was unlawful. The views of the Supreme Court have already been noticed on this aspect and it would be an exercise in futility to pursue this matter further about the true effect of Rule 54 of the Fundamental Rules or for that matter of Rule 52 on which reliance has been placed before us. There are some other Single and Division Bench judgments cited at the Bar, such as *Sudhir Kumar Das* v. *General Manager, N. F. Railway, Maligaon, Pandu* (17): decided by Chief Justice Nayudu and Goswami, J., of the Asam High Court, but in view of the authoritative pronouncements of the Supreme Court, it is not necessary to subject them to any close analysis.

(25) On a review of the authorities which, to emphasise, make no distinction between civil suits and writ proceedings, we are of the opinion that a public servant, after his dismissal or removal has been declared to be unlawful, can claim wages or salary only up to a period of three years and two months from the date when the cause of action accrued. The decisions of this Court in *K. K. Jaggia* v. *The State of Punjab* (1): *Union of India v. Maharaj* (2) and *State of Punjab* v. *Ram Singh Brar* (3) in so far as they take a contrary view have not, in our opinion, been correctly decided. Even in writ proceedings as was held in *State of Madhya Pradesh* v. *Bhailal Bhai* (18), the High Court has, in exercise of its jurisdiction under Article 226 of the Constitution of India, power of enforcement of fundamental rights and statutory rights to give consequential relief but the Court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus when the relief prayed for raises a triable issue of limitation in which case it would be best to leave the party to seek his remedy by the ordinary mode of action in a civil Court.

(26) This answer to the reference does not settle completely the case of the petitioner as according ot Mr. Abnasha Singh, his learned counsel, there is still the question of his seniority and other reliefs

(16) A.I.R. 1968 All. 246.

(17) 1968 Service Law Reporter 654.

(18) A.I.R. 1964 S.C. 1006.

to be settled. We will, therefore, sent back this case to the learned Single Judge for passing appropriate orders. The question of costs does not arise at this stage.

D. K. MAHAJAN, J.—I agree.

R S. NARULA, J.—I also agree.

K.S.K.

FULL BENCH

Before D. K. Mahajan, Shamsher Bahadur and R. S. Narula, JJ.

JAGAN NATH,—*Appellant.*

versus

MITTAR SAIN AND OTHERS

March 13, 1969.

Transfer of Property Act (IV of 1882)—Ss. 72, 76 and 111(d)—Mortgager's tenant—Attorning to the mortgagee—Whether relegates to the position of a tenant of the mortgagor on redemption of the mortgage—Execution of a rent note by mortgagor's tenant in favour of the mortgagee—Fresh tenancy—Whether created—Mortgagor permitting the mortgagee to induct tenants beyond the terms of mortgage—Such tenants—Whether continue as tenants of the mortgagor—Tenancy created by mortgagee of an agricultural land—Such tenancy—Whether continues after redemption.

Held, that a tenant of a mortgagor, after the mortgage, necessarily attorns to the mortgagee and thereby becomes a tenant of the mortgagee, unless his tenancy has been put an end to by the mortgagor at the time of effecting the mortgage. On the redemption of the mortgage, he again is relegated to his position of a tenant of the mortgagor. (Para 16).

Held, that mere execution of a rent-note by the tenant of the mortgagor in favour of the mortgagee, after the mortgage has been effected, does not