APPELLATE CIVIL

Before Shamsher Bahadur and R. S. Narula, JJ.

GULAB RAI,—*Appellant.*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents.*

Regular First Appeal No. 235 of 1961

March 14, 1969

Payment of Wages Act (IV of 1936)—Sections 15 and 22—Workman under the Government dismissed from service on conviction for an offence—Conviction set aside by the High Court—Order of dismissal not recalled by the Government—Such workman—Whether can claim wages before the authority under the Act—Suit for such wages in a Civil Court—Whether barred under section 22(d).

Code of Civil Procedure (V of 1908)—Plea of "denial for want of knowledge" in the written statement to a particular paragraph in the plaint—Such plea—Whether amounts to admission to fix the liability on the defendant.

Held, that when a dismissed workman files a suit against his employer for arrear of wages on his re-instatement in service, the test for determining whether the suit can lie is not only whether on the date of the suit an application can be made to the authority under section 15 of Payment of Wages Act, 1936, but also whether such an application could have been made before the institution of the suit. The jurisdiction of a Civil Court to entertain a suit will not depend upon the choice of the employee as to whether he should or should not apply to the authority under the Act. The jurisdiction of the civil Court is ousted only if the application can be made to the authority at any time before the suit is filed. But this applies where the order of re-instatement is actually passed by the Government itself and the dispute regarding the wages of the previous period arises. Where, however, the order of dismissal is passed on conviction of an employee and the conviction is set aside by the High Court, the employee cannot claim wages before the authority under the Act, so long as the conviction is not set aside. The order of dismissal is a perfectly valid order when it is passed. However, erroneous that order becomes consequent upon the acquittal of the employee by the High Court, the employee cannot possibly ask for wages for the period during which he remains dismissed till the order of dismissal is withdrawn by the employer or held to be void or ineffective by a competent civil Court. As the employee cannot make an application under section 15(2) of the Act any time before the institution of the suit claiming any part of the wages for the period that he remains dismissed, the suit is not barred under section 22(*d*) of the Act. (Paras 9 and 10)

Held, that the plea of the defendant "denial for want of knowledge" in the written statement to a particular paragraph in the plaint may not be tantamount to the denial of the existence of the facts alleged in that paragraph, but this does not amount to an admission which may fix the defendant with liability on that account particularly when the plaintiff fails to prove the allegations contained in that paragraph of the plaint. (Para 8)

Regular First Appeal from the decree of the Court of Shri Onkar Nath, Sub-Judge, 1st Class, Rohtak, dated the 10th October, 1960, dismissing the plaintiff's suit.

ATMA RAM, ADVOCATE, for the Appellant.

H. S. GUJRAL AND BIRINDER SINGH, ADVOCATES, for Respondent No. 1.
RAM RANG, ADVOCATE, for Respondent No. 2.

JUDGMENT

NARULA, J.—This unsuccessful plaintiff's Regular First Appeal is directed against the judgment and decree of the Court of Shri Onkar Nath, Subordinate Judge, Ist Class, Rohtak, dated October 10, 1960, whereby the appellant's suit for recovery of Rs 25,099.25 P. which had been filed in *forma pauperis* was dismissed with costs.

(2) The facts relevant for the decision of this appeal are no more in dispute. Gulab Rai, plaintiff-appellant, whom I will call the plaintiff in this judgment, was in the permanent service of the Railway Department of the Union of India, and was transferred on November 17, 1952, to Bahadurgarh Railway Station in Rohtak district as a Head Booking Clerk. On March 14, 1953, he was arrested for having allegedly accepted a sum of Rs. 11 on that day from one Jawala Parshad by corrupt and illegal means, and by otherwise abusing his position as a public servant while employed as such. Section III(1) of Appendix XXXI-R to the Indian Railway Establishment Code, Volume II, which governed the service conditions of the plaintiff provided as below:—

> "A railway servant against whom proceedings have been taken either for his arrest for debt or on a criminal charge should be considered as under suspension for any period during which he is detained in custody or is undergoing imprisonment and not allowed to draw any pay and allowances other than any subsistence allowance that may be granted in accordance with the principles laid down in Rule 2043-R (Fundamental Rule 53) for such periods until the termination of the proceedings taken against

him. An adjustment of his allowances for such periods should thereafter be made according to the circumstances of the case the full amount being given only in the event of the officer being acquitted of blame or (if the proceedings taken against him were for his arrest for debt) of its being proved that the officer's liability arose from circumstances beyond his control."

As soon as the Divisional Personnel Officer of the Northern Railway was informed of the arrest of the plaintiff in the abovesaid circumstances, he issued telegram, Exhibit D. W. 2/13, dated March 14, 1953, to the Station Master, Bahadurgarh, reading as follows:—

"Place B. C. (Booking Clerk) Gulab Rai under suspension immediately aaa advise date aaa. He will draw half pay plus dearness allowance as admissible as subsistence allowance aaa."

(3) The plaintiff was in due course, put up for trial under section 5(1) (d) of the Prevention of Corruption Act on the allegation that he had committed an offence punishable under section 5(2) of the said Act. Sanction for his prosecution was, however, obtained only on October 21, 1953. Though the plaintiff had originally claimed that his date of birth was December 30, 1903, the finding of the trial Court to the effect that his date of superannuation had to be determined on the basis of his date of birth being July 1, 1899, has not been disputed before us. The plaintiff, therefore, attained the age of 55 years on June 30, 1954. Rule 2046(2) (a) of the Indian Railway Establishment Code, Volume II, which prescribes the age of compulsory retirement of a railway ministerial servant like a Booking Clerk is in the following terms:—

"A ministerial servant, who is not governed by sub-clause (b), may be required to retire at the age of 55 years, but should ordinarily be retained in service, if he continues efficient up to the age of 60 years. He must not be retained after that age except in very special circumstances, which must be recorded in writing, and with the sanction of the competent authority."

(4) It is the admitted case of both sides that the case of the plaintiff was governed by clause (a) of sub-rule (2) of rule 2046, and further that no order was passed by any competent authority at any stage requiring the plaintiff to retire at the age of 55 years. By

order of Shri I. M. Lal, Special Judge, Ambala, dated August 30, 1954 (Exhibit P. 6), the plaintiff was discharged from the abovesaid criminal case on the technical ground that the sanction for his prosecution, which had been granted by the Divisional Commercial Superintendent, Northern Railway, was not by a competent authority. Proper sanction for his prosecution from the Chief Commercial Superintendent, a competent authority was then obtained (Exhibit P. 70) on September 24, 1954. On the basis of the said sanction, the plaintiff was again sent up for trial to the Court of the Special Judge, Ambala, on March 25, 1955. Shri Hans Raj Khanna, Special Judge, Ambala (now Hon'ble Mr. Justice H. R. Khanna of the Delhi High Court), by his judgment, dated May 27, 1957, held the plaintiff guilty of having committed an offence under section 5(1) (d) punishable under sub-section (2) of section 5 of the Prevention of Corruption Act, and while convicting the plaintiff under the said provision, sentenced him to undergo rigorous imprisonment for a period of two months and to pay a fine of Rs. 100. When the conviction report of the plaintiff was received from the Superintendent of Police, Special Police Establishment, Ambala City, the Divisional Superintendent, Delhi passed order Exhibit D.W. 3/1 on June 18, 1957, to the followng effect:—

> "The employee may be dismissed from service in view of his conviction."

On account of proviso (a) to clause (2) of Article 311 of the Constitution, the plaintiff had admittedly earned summary dismissal from service without the requirement of any enquiry or any other formality. On the basis of the abovesaid order of the Divisional Superintendent, the communication, Exhibit D.W. 2/16, dated June 20, 1957, was sent to the Divisional Personnel Officer requiring him to dismiss the plaintiff from service in view of his conviction. On the receipt of the communication Exhibit D.W. 2/16, the Divisional Personnel Officer passed the formal order Exhibit D.W. 2/15, dated June 21, 1957, addressed to the plaintiff in these words:—

> "You are hereby informed that in accordance with the orders passed by D. S., Delhi, (Divisional Superintendent, Delhi), the following penalty has been awarded to you:—
>
> As a result of your conviction by the Court of law you are dismissed from service with effect from 23rd June, 1957 (F.N.)".

Exhibit D.W. 2/8 is another copy of the same order. Thereafter formal order Exhibit D.W. 2/14, dated November 12, 1957, regarding

the emoluments to which the plaintiff was entitled for the period of his suspension, was passed in the following terms:—

> "He (Gulab Rai plaintiff) will not draw anything more than what he had already drawn as subsistence allowance. The period of suspension to be treated as SUS, i.e., not qualifying for service."

(5) By the judgment and order of a learned Single Judge of this Court (S. B. Capoor, J., as he then was) Exhibit P. 4, dated March 4, 1958, the appeal of the plaintiff against his conviction by the Special Judge, Ambala, was allowed, and he was acquitted on being given the benefit of doubt. The result of the acquittal of the plaintiff was that the basis of the order of his dismissal from service vanished. In spite of this the plaintiff was not reinstated. After giving the usual notice, Exhibit P. 7, dated November 10, 1958, under section 80 of the Code of Civil Procedure, the plaintiff filed application, dated March 3, 1959, in the trial Court for leave to sue in *forma pauperis* for the recovery of Rs. 15,554·25 P., from defendant No. 1 alone on account of arrears of his salary for the period commencing from the date of his suspension, i.e., from March 14, 1953, and terminating with March 31, 1959, including the amount of increments which would have been earned by him during the said period, refund of house rent recovered from the plaintiff and claim for house rent for the period for which he had not been paid such an allowance (for which period no rent-free accommodation was given to the plaintiff by the Railway Administration as required under the rules), after adjusting from the total amount thus due to him, the amount of subsistence allowance which had been paid to him during that period. Plaintiff also claimed another sum of Rs. 9,545 from the Union of India representing the Railway Administration as well as from defendants Nos. 2 and 3 (Kalyan Sarup, Assistant Station Master, and Jamna Dass, Station Master of Bahadurgarh at the relevant time) on account of damages for malicious prosecution. The plaintiff was allowed leave to sue in *forma pauperis*. The suit was contested by the Railway Administration as well as by the defendant No. 2. From the pleadings of the parties, the trial Court framed the following issues:—

1. Whether defendants 2 and 3 entered into a conspiracy as alleged in paragraph 66 of the plaint with the object of implicating the plaintiff in a false criminal case ?
2. Whether defendants 2 and 3 along with others on 14th March, 1953, in order to further their design without any reasonable and probable cause and actuated by malice falsely implicated the plaintiff in a false criminal case ?

3. In case of proof of issues Nos. 1 and 2 whether defendants 2 and 3 are not liable for damages as claimed by the plaintiff ?

4. To what amount of damages is the plaintiff entitled against defendants Nos. 2 and 3?

5. Whether the suit is barred by time ?

6. Whether the suit is barred under the provision of Payment of Wages Act?

7. Whether the notice under section 80, Civil Procedure Code served on defendants No. 1 is invalid?

8. Whether the order of dismissal of the plaintiff is void on the grounds as stated in the plaint?

9. What is the date of superannuation of the plaintiff and what is its effect?

10. To what amount of arrears of pay and damages as stated in paragraphs 14 and 17 of the plaint is the plaintiff entitled?

11. Whether defendant No. 2 is entitled to special costs?

12. Relief."

By its judgment, dated October 10, 1960, the trial Court found on issues Nos. 1 to 4 that defendants Nos. 2 and 3 had not been proved to have entered into a conspiracy with the object of implicating the plaintiff in a false criminal case, that the prosecution of the plaintiff was not without any reasonable and probable cause, and was not actuated by any malice, and that, therefore, the plaintiff was not entitled to any damages on account of the alleged malicious prosecution. On the other issues relating to the claim of the plaintiff against the Union of India for arrears of his emoluments it was held that his suit was neither barred by time nor under the provisions of the Payment of Wages Act, that a valid notice under section 80 of the Code of Civil Procedure was served by the plaintiff on defendant No. 1, that the order of dismissal of the plaintiff from service automatically stood cancelled on his acquittal in appeal, that the date of superannuation of the plaintiff was June 30, 1954 (his assumed date of birth having been found to be July 1, 1899), that the normal date of superannuation of the plaintiff at the age of 55 years stood extended up to the date of his acquittal by the High Court, but that the

plaintiff was not entitled to any relief as he had been under suspension from 14th March, 1953, up to the date of his acquittal and the validity of the order of his suspension had not been challenged in the suit.

(6) Not satisfied with the decree of the trial Court, the plaintiff came to this Court under Order 44 Rule 1 of the Code of Civil Procedure for leave to appeal in *forma pauperis*. His application was dismissed, but he was allowed to make up the deficiency in court-fees. At that stage he gave up his claim for damages for malicious prosecution to the extent of Rs. 7,600 and confined his said claim (which was originally for Rs. 9,545) to Rs. 1,945 only and value his appeal for purposes of court-fees on a sum of Rs. 17,499.25 P. only (Rs. 15,545.25 P., on account of arrears of his salary and allowances, etc., and Rs. 1,945 on account of damages for malicious prosecution).

(7) At the heairg of the appeal Diwan Atma Ram took us through the evidence led by the plaintiff in support of his claim for malicious prosecution and somewhat half-heartedly argued that the findings of the trial Court on Issue Nos. 1 and 2 were liable to be reversed. Without expressly stating that he was not pressing his client's claim for Rs. 1,945 on account of damages, he really gave up that claim for all practical purposes on being faced with:—

(i) the fact that the plaintiff had not been prosecuted by the police on any report of defendant No. 2 or defendant No. 3;

(ii) the fact that the trial Court which had the benefit of observing the witnesses of the plaintiff who were produced to prove the alleged conspiracy had held for good reasons that their statements did not inspire confidence;

(iii) the fact that it is not easy to believe that the Vigilance Officer had stooped down to conspire with respondents 2 and 3 to falsely implicate an innocent man;

(iv) the fact that the only evidence of the alleged conspiracy was the oral testimony of the P.Ws. who claimed to have been eavesdropping over the alleged confabulations between defendants 2 and 3 and the police officials and it is well-known that the evidence of "peeping Toms" is hardly ever treated with any substantial credulity; and

(v) the further fact that the plaintiff had been convicted by the Special Judge, but had ultimately been acquitted by this Court merely on getting the benefit of doubt.

We have, therefore, no hesitation in affirming the findings of fact recorded by the trial Court on issues Nos. 1 and 2, and in upholding the dismissal of the plaintiff's claim for damages for malicious prosecution.

(8) Learned counsel for the plaintiff then submitted that even if we hold that the claim for damages against respondents 2 and 3 has not been substantiated, a decree for the amount claimed on that account against the Union of India must be passed as the following averments in paragraphs 5 and 6 of the plaintiff have been "admitted" by the Union of India to be correct:—

> "5. That defendants 2 and 3 along with other Railway staff working at Bahadurgarh from the very start were inimically disposed towards the applicant and they vehemently opposed his posting there. The applicant is an honest and straightforward man and he used to point out any dereliction of duty on the part of staff and this brought on him the odium of the entire staff.
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> 6. That in order to get rid of his presence, defendants 2 and 3 along with other members of the staff entered into an unholy conspiracy with Shri Abbas, Inspector Special Police Establishment, Delhi, and Deputy Superintendent of Police Shri Roshan Lal with the object of implicating him in a false criminal case. In order to further this design all of them on 14th March, 1953, without any reasonable and probable cause and actuated by malice implicated the applicant in a false and frivolous case. The latter was consequently arrested on a charge under section 5(2) of the Prevention of Corruption Act II 1947, and he had to give a bail bond in the sum of Rs. 3,000 to get himself released. The applicant stood suspended under orders of defendant No. 1 as from 14th March, 1953."

What the Union of India stated in the corresponding paragraphs of its written statement was this:—

> "5. Paragraph 5 is denied for want of knowledge.
>
> 6. Paragraph 6 is admitted to the extent that the plaintiff was suspended with effect from 14th March, 1953, on receipt of a message from D.S.P./S.R.E. The rest is denied for want of knowledge."

Counsel wanted us to hold that on the application of the principles laid down in Order 8 Rule 5 of the Code of Civil Procedure as interpreted in *Jahuri Sah and others* v. *Dwarika Prasad Jhunjhunwala and others* (1), the 'denial for want of knowledge' pleaded by the Union of India is not tantamount to a denial of the existence of the facts alleged in paragraphs 5 and 6 of the plaintiff. We are unable to hold that 'denial for want of knowledge' amounts to such an admission as to fix the defendant concerned with liability on that account alone particularly when we have held on the facts of this case that plaintiff has failed to prove the allegations made by him in paragraphs 5 and 6 of the plaintiff.

(9) Real arguments were addressed by Diwan Atma Ram in this case in respect of the claim of the plaintiff for arrears of salary, etc., against the Union of India. Before dealing with the submissions made by the learned counsel for the plaintiff on the merits of his claim against the Government, it is necessary to dispose of the arguments of Shri Harbans Singh Gujral, the learned counsel for the Railway Administration on issue No. 6. Mr. Gujral urged that the jurisdiction of the Civil Court from entertaining or adjudicating upon the entire claim of the plaintiff detailed in paragraph 14 of the plaint is barred by section 22(d) of the Payment of Wages Act (4 of 1936) (hereinafter called the Wages Act), Mr. Gujral submitted that besides arrears of salary which are admittedly wages, the amount claimed by the plaintiff on account of increments is also a wage as held by a Division Bench of the Madras High Court in *Managing Director, T.S.T. Company, Ltd.* v. *R. Perumal Naidu and another* (2). It was held in that case that the increment which is payable under the contract between the employer and the workman would be wage within the meaning of section 15 of the Wages Act. Similarly, counsel submitted on the basis of a Division Bench judgment of the Rajasthan High Court in *Anant Ram and others* v. *District Magistrate, Jodhpur and another* (3), and on the basis of the authoritative pronouncement of their Lordships of the Supreme Court in *Purshottam H. Hudye and others* v. *V. B. Potdar, the Authority appointed under the Payment of Wages Act and another* (4), that gratuity which is payable under an instrument is also covered by the definition of the word "wage" within the meaning of the Wages Act. Amount due for the suspension period is also

(1) A.I.R. 1967 S.C. 109.

(2) A.I.R. 1958 Mad. 25.

(3) A.I.R. 1956 Raj. 145.

(4) A.I.R. 1966 S.C. 856.

souguht by Mr. Gujral to be included in the expression "Wages" the meaning of the Wages Act on the authority of a Division Bench judgment of the Madras High Court in *P. Doraikannu* v. *The Proprietor, Hotel Savoy, Madras* (5). It was, therefore, argued that all the items constituting the claim of the plaintiff as contained in paragraph 14 of his plaint are covered by the term "wages" for the alleged illegal detention of which a claim lay under section 15 of the Wages Act. It was then submitted that though their Lordships of the Supreme Court left the question of the bar of a civil suit in respect of a claim which could have been filed under the Wages Act open in the *Bombay Gas Co., Ltd.* v. *Gopal Bhiva and others* (6), it has been held by a Full Bench of the Bombay High Court in *Kewalram Ghana Shyamdas and others* v. *Ram Manohardas Kalyandas* (7), and in a recent unreported judgment of this Court in *Union of India* v. *Mohan Singh Chaudhri* (8), that a suit in respect of a claim which could have been preferred under section 15 of the Wages Act is barred under clause (d) of section 22 of the Wages Act even if the limitation for making a claim under the said Act has already expired. The relevant part of section 22 of the Wages Act states:—

> "No Court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed—
>
> (a) * * * * * * * * * *.
> (b) * * * * * * * * * *.
> (c) * * * * * * * * * *.
> (d) could have been recovered by an application under section 15."

Section 15 provides, *inter alia*, that the authority under the Act can hear and decide all claims arising out of deduction from the wages or delay in payment of the wages of persons employed or paid in the area over which the authority exercises jurisdiction. Sub-section (2) of section 15 states that an application under that sub-section can be presented only within twelve months from the date on which the deduction from the wages was made or from the date on which payment of the wages was due to be made as the case may be, provided that time can in that

(5) A.I.R. 1966 Mad. 201.

(6) A I.R. 1964 S.C. 752.

(7) A I.R. 1965 Bom. 185.

(8) M.F.A. 94 of 1958 decided on 20th August, 1968.

respect be extended by the authority if it is satisfied that the claimant had sufficient cause for not making the application within the prescribed period. In the *case of Kewalram Ghana Shayamdas and others* (supra), (7), the Full Bench of the Bombay High Court held that a civil Court has no jurisdiction to entertain a suit by an employee against his employer for the recovery of wages after the expiry of the period of limitation prescribed by sub-section (2) of section 15 of the Wages Act for making an application to the authority appointed under that Act or if the authority has refused to condone the delay in making such an application. The expression "could have been recovered by an application under section 15" used in clause (d) of section 22 was interpreted by the Full Bench of the Bombay High Court to mean "could have made an application for recovery of the sum so claimed under section 15." It was held that the test for determining whether a suit can lie is not only whether on the date of the suit an application can be made to the authority under section 15, but also whether such an application could have been made before the institution of the suit. On that basis it was ruled that the jurisdiction of a civil Court to entertain a suit will not depend upon the choice of the employee as to whether he should or should not apply to the authority under the Wages Act, and that the jurisdiction of the civil Court would be ousted if the application could have been made to the authority at any time before the suit was filed. In *Mohan Singh Chaudhri's case* (ibid) (8), a Division Bench of this Court (Sandhawalia, J., and myself) approved of the Single Bench judgment of Falshaw, J., (as he then was) in *Risal Singh* v. *Union of India and another* (9), and of the Division Bench judgment of the Nagpur High Court in *Bhagwat Rai* v. *Union of India and another* (10), and held that where wages are withheld from an employee once removed from service, but later reinstated, the same can be treated as either wages deducted or wages regarding which there has been a delay in payment, and that in such cases, the authority under the Wages Act has jurisdiction to adjudicate upon the claim of the workman. Mohan Singh Chaudhri had in fact made a claim under section 15 of the Wages Act which had been disallowed by the appellate authority under that Act on the ground that the application under section 15 had been made beyond the period of limitation prescribed under sub-section (2) of that section. The appeal of the Union of India against the judgment and decree passed by the trial Court in favour of Mohan Singh Chaudhri was, therefore, allowed by us, and his suit was dismissed in the regular

(9) 1958 P.L.R. 227.

(10) A.I.R. 1958 Nag. 136.

first appeal as being barred by section 22(d) of the Wages Act. Mr. Gujral contends that the Division Bench judgment of this Court in the *case of Mohan Singh Chaudhri* (8), is on all fours, and following the same we should reverse the finding of the trial Court on issue No. 6, and uphold the order of the trial Court dismissing the suit of the plaintiff without going into the other issues. The learned counsel for the Railway Administration further gave an assurance to us that if we were to dismiss the appeal on this ground, the Railway Administration would still entertain the claim of the plaintiff for the emoluments due to him for the period March 14, 1953 to March 4, 1958, i.e., with effect from the date of his order of suspension to the date of his acquittal by the High Court, departmentally, as he frankly conceded that the decision of the trial Court on issue No. 8 is sound and correct.

(10) On a careful consideration of the matter, we are unable to agree with Mr. Gujral that the law laid down by the Bombay High Court in the *case of Kewalram Ghana Shyamdas and others* (7), and in the *case of Mohan Singh Chaudhri* (8), has any application to the facts of this case. In both those cases the order of reinstatement had actually been passed by the Government and the disputes regarding the wages for the previous period had thereafter arisen. In *Risal Singh's case* (9), as well as in the other cases referred to in our judgment in the *case of Mohan Singh Chaudhri* (8), similar was the situation. In the present case, however, the order of dismissal of the plaintiff which was passed by the competent authority on June 18/21, 1957, which was a perfectly valid order when it was passed, was never recalled by the Government. Howsoever, erroneous that order might have become consequent upon the acquittal of the plaintiff by the High Court, the plaintiff could not possibly have asked for wages of the period during which he had remained dismissed till the order of his dismissal was either withdrawn by the employer or held to be void or ineffective by a competent civil Court. That is why the plaintiff specifically claimed in paragraph 12 of his plaint, that the order of his dismissal from service based on his conviction, dated May 27, 1957, by the Special Judge, Ambala, had automatically fallen through on his acquittal by the High Court, and the plaintiff was entitled to be reinstated and to receive full pay and other emoluments including dearness allowance, etc., permissible to him under the rules. The claim for money decree on account of emoluments was based on the abovesaid stand taken by the plaintiff. The claim of the plaintiff in this behalf was denied by the Union of India. This controversy led to the framing of issue No. 8 which has already been reproduced above. There appears to be no doubt whatever that the

claim made by the plaintiff in paragraph 12 of his plaint and denied in the corresponding paragraph of the written statement of the Union of India and forming the subject-matter of issue No. 8 could not possibly have been adjudicated upon by the authority under section 15 of the Wages Act. Unless the said claim of the plaintiff was allowed and unless it was held that the order of his dismissal had either ceased to have effect or become void, the foundation for a claim for a wage could not be laid. A learned Single Judge of the Kerala High Court held in *J. Malby D' Cruz and others* v. *The Chief Administrative Officer, Travancore Minerals Ltd., and others* (11), that a workman who had actually been retrenched in contravention of the provisions of section 25-F of the Industrial Disputes Act cannot be deemed to be still in service so as to be entitled to earn wages notwithstanding the termination of his employment till the order of his retrenchment is set aside in appropriate proceedings. The ratio of that judgment, with which we respectfully agree, applies to the case of a workman who wants to approach the Authority under the Wages Act for recovery of wages for the period during which he stood dismissed from service, without first getting the order of dismissal set aside. In the circumstances of this case, therefore, we hold that the plaintiff could not have made an application under section 15(2) of the Wages Act claiming any part of the amount claimed in the present suit at any time before the institution of the suit from which the present appeal has arisen. We agree with Mr. Gujral that the basis on which the trial Court has decided issue No. 6 against the Union of India is wholly misconceived and erroneous. The learned Subordinate Judge held that the claim in suit could not have been brought before the authority under the Wages Act as part of it is for damages for malicious prosecution. The two items of claim are distinct and easily severable. The causes of action for the two claims are entirely different. Whereas the claim for emoluments is made only against the Union of India which was defendant No. 1 in the suit, the claim for damages for malicious prosecution has been preferred against all the three defendants. Mr. Gujral contends that the joint suit in respect of both the abovesaid claims, as constituted, was bad on account of multifariousness, i.e., on account of misjoinder of causes of action, and relies in that connection on a Division Bench judgment of the Chief Court of Punjab in *Gokal Chand* v. *Khwaja Ali Shah and another* (12), and on a Division Bench Judgment of the Madras High Court in *Pulavarty Venkanna and another* v. *Jupudy Sarayya and others* (13). Counsel submits that he does not now claim at this

(11) A.I.R. 1968 Kerala 121.

(12) 32 P.R. 1890.

(13) 4 I.C. 1097 (2).

stage that the suit of the plaintiff-appellant should be dismissed on account of multifariousness, but submits that on the authority of the abovesaid two judgments, it should be held that the two causes of action were absolutely distinct and patently severable, and that if the claim based on one of those causes of action was barred under section 22(d) of the Wages Act, it could not be allowed to be preferred in a Civil Court merely because the claim on an entirely separate and distinct cause of action was not entertainable by the authority under the Wages Act. We agree with Mr. Gujral in this respect, but are still unable to reverse the finding of the trial Court on issue No. 6 because we have already held above that the plaintiff could not have claimed the amount of his wages under section 15(1) of the Wages Act at any time before he instituted the present suit as no order of his reinstatement had been passed by the Government and he could not have straightaway claimed wages when he was still under an order of dismissal howsoever illegal the order might have been.

(11) Ground is now clear for proceeding to notice the arguments of Diwan Atma Ram on the merits of the claim of the plaintiff which can safely be divided into the following three categories:—

(A) Claim in respect of the balance of the emoluments (after giving credit for the subsistence allowance received by the plaintiff) for the period March 14, 1953, to January 2, 1956;

(B) Claim for emoluments for the period January 3, 1956 to March 4. 1958; and

(C) Claim in respect of the period March 5, 1958 to March 31, 1959.

The entitlement of the plaintiff to emoluments for the period March 14, 1953, to March 4, 1958, would be the same, but I have divided it into two distinct parts (A and B) as the claim covered by part (A) related to a period removed by more than three years and two months from the date of the institution of the suit. If that part of the plaintiff's claim which is covered by part (A) above is held to be within time, there will be no other distinction between part (A) and part (B) of the plaintiff's claim. The claim in respect of the period covered by part (C) rests on an entirely different footing, and will be entitled to succeed only if we hold that in the circumstances of the case, the plaintiff was deemed to have continued in service after March 4, 1958.

(12) I will first deal with the plaintiff's claim to emoluments for the period March 14, 1953, to March 4, 1958, subject to the question

of limitation. There is no force in the argument of Mr. Gujral to the effect that the order Exhibit D.W. 2/14, dated November 12, 1957 (already quoted), put an end to the claim of the plaintiff for this period as it was stated therein that the plaintiff would not draw anything more than what he had already drawn as subsistence allowance, as it was open to the competent authority to decide as to what emoluments the plaintiff would be permitted to draw for the period of suspension. Section III(1) of the Appendix XXXI-R of the Indian Railway Establishment Code, Volume II (quoted already) states that an adjustment of a Railway servant's allowances for the period of suspension should be made according to the circumstances of the case, but emphasises that "the full amount being given only in the event of the officer being acquitted of the blame." This clearly shows that if a Railway employee is put under suspension on account of his arrest on a criminal charge, but is subsequently acquitted by the criminal Court, he would be entitled to his full allowances less the amount already paid to him for his subsistence. In any event, the order D.W. 2/14, which had been passed on November 12, 1957, was only consequent upon the dismissal of the plaintiff on his conviction and ceased to have effect as soon as the plaintiff was acquitted. If therefore, the plaintiff was entitled to anything for the period in question, he would be entitled to his full emoluments, as if he had never been placed under suspension. Mr. Gujral conceded that the defence taken up by the Railway Administration about the Union of India not being liable to pay the salary etc., of the plaintiff as he had not been honourably acquitted, but had merely been acquitted on account of being given the benefit of doubt, is not sound in view of the judgment of this Court in *Jagmohan Lal* v. *State of Punjab and others* (19). It has already been held by a Division Bench of this Court in *K. K. Jaggia* v. *The State of Punjab* (15), that suspension becomes wrongful after the setting aside of the order of dismissal and after the reinstatement of a Government servant. Mr. Gujral submitted that the law laid down by this Court in *K. K. Jaggia's case* (15), is not applicable to the plaintiff's case as no order of reinstatement was passed in his favour. In view of the fact that the order of plaintiff's dismissal from service was passed solely and exclusively on his conviction, tnd the said order of dismissal is deemed to have ceased to have effect on the plaintiff's acquittal by this Court, the plaintiff was entitled to immediate reinstatement and we have to decide the question of the emoluments to which the plaintiff is entitled on the basis that he is deemed to have been reinstated into service on March 4,

(14) A.I.R. 1967 Pb. 422.

(15) '965 P.L.R. 1092.

1958, immediately on the culmination of his extended period of service under sub-rule (4) of rule 2046 to which reference will be made while dealing with part (C) of the plaintiff's claim. We are of the opinion that though the trial Court was correct in its finding to the effect that the plaintiff was deemed to have retired on March 4, 1958, it erred in holding that he was not entitled to any relief. Despite having held that the date of superannuation of the plaintiff stood extended, in the present case, up to March 4, 1958, by operation of sub-rule (4) of Rule 2046 of the Indian Railway Establishment Code, the trial Court refused to grant the plaintiff any relief in respect of his emoluments for the period ending March 4, 1958, on two grounds, viz:—

(1) that the order of suspension had not been challenged by the plaintiff in the present suit and as such it was not for the Court to go into the *pros* and *cons* of the validity of the suspension order; and

(2) that the plaintiff was not entitled to any salary as he had been suspended under the rules to which he was subject as a part of his contract of service and a Government servant is not entitled to salary during the period of suspension at the same rate at which he would have been entitled to the same if he had not been suspended.

We have already held above, on the authority of judgment of this Court in *K. K. Jaggia's case* (*supra*) (15), that the order of suspension becomes wrongful on the setting aside of the order of dismissal and on the reinstatement of a Government servant. Once the order of dismissal was challenged by the plaintiff and his challenge was found to be justified, the order of his suspension automatically disappeared with his order of dismissal. For the second ground on which the claim of the plaintiff was dismissed, the learned Subordinate Judge relied on the Full Bench judgment of this Court in *Divisional Superintendent, Northern Railway, Delhi Division* v. *Mukand Lal* (16). In that case, it was held that an authority under the Payment of Wages Act is not competent to order the employer to pay the full amount of wages of a workman in respect of the period during which he was under suspension if he has been suspended in accordance with his Service rules. The law laid down in *Mukand Lal's case* (16), has no application to the matter in hand as the scope of the jurisdiction of a civil Court is much wider than that of an authority under the Payment of Wages Act. I can certainly envisage cases

(16) 1957 P.L.R. 173.

in which the order of dismissal would be set aside without in any manner impinging the order of suspension. In a case of that type, the order of suspension may survive even the declaration of the order fo dismissal being invalid; but in the instant case, the order of suspension and dismissal were both based on the arrest and conviction of the plaintiff on a criminal charge and both of them came to an automatic end by the plaintiff's acquittal of the criminal charge. Both the grounds on which the trial Court refused to allow the claim of the plaintiff in this respect were, therefore, erroneous in law. In these circumstances, we would hold that subject to the question of limitation, the plaintiff is entitled to the amounts claimed by him for the period March 14, 1953 to March 4, 1958, as Mr. Gujral was unable to point out any error in the calculations made by the plaintiff in paragraph 14 of his plaint.

(13) So far as the question of limitation is concerned, it has already been settled authoritatively by their Lordships of the Supreme Court in *Madhav Laxman Vaikunthe* v. *State of Mysore* (17), that article 102 of the first Schedule to the Limitation Act, 1908, applies to a suit for arrears of salary. There was, however, a conflict of opinion between the decisions of two different Division Benches of this Court on the proper construction and meaning of the expression "when the wages accrue due" S. B. Capoor and Khanna, JJ., have held in *Union of India* v. *Maharaj* (18), that the arrears of salary due for a period during which an employee was under an order of wrongful dismissal accrue due only when the order of dismissal from service is annulled or declared void by a competent Court. On the other hand it has been held by Dulat and S. K. Kapur, JJ., in *Union of India* v. *Ram Nath* (19), that the wage of an employee relating to the period during which he was not actually serving on account of the operation of a void order of dismissal continues to accrue due to the employee at the end of every month after it is declared that the order of dismissal was void and deemed to have been non-existent. This conflict has since been resolved by a Full Bench of this Court (Mahajan and Shamsher Bahadur, JJ., and myself), in *Jagdish Mittar* v. *Union of India and another* (20). It has been held that *Ram Nath's case* (19), was correctly decided as it is in consonance with the pronouncement of their Lordships of the Supreme Court in *Madhav Laxman Vaikunthe's case* (17). Following the said judgment of the

(17) A.I.R. 1962 S.C. 8.

(18) R.F.A. 8-D of 1964 decided on 6th September, 1966.

(19) I.L.R. (1966) 2 Pb. 907.

(20) C.W. 2307 of 1965 decided on 28th February, 1969.

Full Bench of this Court I would hold that the claim of the plaintiff in respect of the period March 14, 1953 to January 2, 1956 (claim 'A' referred to by me) is barred by time. The plaintiff would, however, be entitled to his claim for the period marked 'B', i.e., claim in respect of the period January 3, 1956 to March 4, 1958, being decreed.

(14) Counsel for the plaintiff then contended that by virtue of rule 2046(2)(a) of the Indian Railway Establishment Code, Volume II (which has already been quoted verbatim in an earlier part of this judgment), the plaintiff should be deemed to have been retained in service till he attained the age of sixty years, i.e., till June 30, 1959, as there is nothing to show that he did not continue to be efficient till that time, and as no order requiring him to retire at the age of 55 years had ever been passed. We are unable to agree with this submission of Diwan Atma Ram. The facts of this case clearly show that the plaintiff was suspended on March 14, 1953, and that, therefore, it cannot be argued that on June 30, 1954, when he attained the age of 55 years, he was deemed to have been held to be efficient enough to continue in service till he attained the age of sixty. The plaintiff continued in service because of the statutory provisions of sub-rule (4) of rule 2046 of Volume II of the Railway Establishment Code which sub-rule states:—

> "Notwithstanding anything contained in clauses (1), (2) and (3), a Railway servant under suspension on a charge of misconduct shall not be required or permitted to retire on reaching the date of compulsory retirement, but shall be retained in service until the enquiry into the charge is concluded and a final order is passed thereon by competent authority."

(15) By operation of the above-quoted rule, the plaintiff was not permitted to retire from June 30, 1954, till March 4, 1958, when the criminal proceedings against the plaintiff finally culminated in the order of this Court acquitting him of the charges on which he was being tried. Since his continuation in service was by operation of rule 2046(4), the said continued service automatically came to an end on March 4, 1958. The mind of the Railway Authorities is also clear from order Exhibit 'D/1' passed by the Divisional Personnel Officer of the Northern Railway on June 20, 1959, on the application of the plaintiff, dated September 8/23, 1958, for reinstatement which order was in the following language:—

> "Please note that your request for reinstatement cannot be accepted as you reached the age of superannuation on 30th June, 1954, and are not legally entitled to be reinstated."

It is needless to go any further into this question. The plaintiff has not specifically claimed in any part of his plaint that he should be deemed to have remained in service till the age of sixty years. He would have attained the age of sixty on June 30, 1959. He has not even claimed salary for the period ending June 30, 1959, but has claimed the same only up to March 31, 1959. Though the application was filed on March 3, 1959, tnd salary for the whole of the month of March, 1959, which had not yet run out had been claimed, nothing was claimed for the months of April to June, 1959. No such specific claim for salary up to the age of sixty years having been made in the plaint we are unable to allow such a claim being pressed at the appellate stage for the first time. The claim of the plaintiff covered by Parts (A) and (C), therefore, fails, but his claim in respect of period (B) succeeds.

(16) For the foregoing reasons, we partially allow this appeal, set aside the decree of the trial Court and substitute for the same a decree for the payment of Rs. 2,960 in favour of the plaintiff-appellant against defendant-respondent No. 1 with proportionate costs throughout. If the decretal amount is not paid to the appellant within two months of the passing of this decree, it shall carry future interest at six per cent per annum with effect from today, till the date of actual payment.

SHAMSHER BAHADUR, J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

KUNDAN LAL,—*Petitioner*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents*

Civil Writ No. 650 of 1964

April 1, 1969

Public Accountants' Default Act (XII of 1850)—S. 3—Public accountant—Meaning of—Government servant receiving money contrary to the requirements of his duties—Such Government servant—Whether 'public accountant'.

Held, that if a Government servant who is not entrusted with the receipt, custody or control of any moneys or securities for money, or the management of any lands belonging to any other person or persons but on the other hand is specifically excluded from receipt or control of money is