

RAMESHWARLAL
v.
MUNICIPAL COUNCIL, TONK AND ORS.

AUGUST 27, 1996

[K. RAMASWAMY, B.L. HANSARIA AND S.B. MAJMUDAR, JJ.]

Limitation Act, 1963 :

Section 14—Limitation period—Enlargement of—Non-payment of salary for a certain period—Employee filing writ petition in the High Court—Single Judge as well as Division Bench refusing to grant relief—Only other remedy is to file a civil suit for which time has already run out—Held, time taken in prosecuting the proceedings before the High Court and Supreme Court, pursued diligently any bona fide needs to be excluded—Petitioner to issue notice to the municipality within four weeks and to file suit within two months thereafter. Trial Court to consider and dispose of the matter in accordance with law on merits.

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
No. 16339 of 1996.

From the Judgment and Order dated 6.5.96 of the Rajasthan High Court in DBCSA No. 218 of 1996.

B.D. Sharma and Piyush for the Petitioner.

The following Order of the Court was delivered :

The petitioner claims that he has been denied the salary for period from September 10, 1987 to August 18, 1988. He claims to have worked in the office of the Municipal Council, Tonk. He filed writ petition in the High Court in February 1990. The learned single Judge held that since it is a claim recoverable in a civil action, the discretionary power under Article 226 of the Constitution is not exercisable. Accordingly, he dismissed the writ petition. The same came to be confirmed in the impugned order of the Division Bench made on may 6, 1996 in Special Appeal No. 218/96. Thus, this special leave petition.

It is not necessary for us to go into the question of the legality of the

- A order of the High Court in refusing to grant the relief. It is axiomatic that the exercise of the power under Article 226 being discretionary, the learned single Judge as well as the Division Bench have not exercised the same to direct the respondent to pay the alleged arrears of salary alleged to be due and payable to the petitioner. Under these circumstances, the only remedy open to the petitioner is to avail the action in the suit. Since the limitation has run out to file a civil suit by now, which was not so on the date of the filing of the writ petition, the civil Court is required to exclude, under Section 14 of the Limitation Act, 1963, the entire time taken by the High Court in disposing of the matter from the date of the institution of the writ petition.
- C *Normally for application of Section 14, the Court dealing with the matter in the first instance, which is the subject of the issue in the later case, must be found to have lack of jurisdiction or other cause of like nature to entertain the matter.* However, since the High Court expressly declined to grant relief relegating the petitioner to a suit in civil Court, the petitioner cannot be left remedyless. Accordingly, the time taken in prosecuting the proceedings before the High Court and this Court, obviously pursued diligently and *bona fide*, needs to be excluded. The petitioner is permitted to issue notice to the Municipality within four weeks from today. After expiry thereof, he could file suit within two months thereafter. The trial
- E Court would consider and dispose of the matter in accordance with law on merits.

The special leave petition is disposed of accordingly.

G.N.

Petition disposed of.