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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.26 OF 2019
WITH
CIVIL APPLICATION NO.56 OF 2021
IN
SECOND APPEAL NO.26 OF 2019**

Padmanabha Anantrao Panditrao Appellant.
V/s
Divisional Controller for
Maharashtra State Road Transport
Corporation, Mumbai Respondent.

Mr. Purushottam G. Chavan for the Appellant.

CORAM: NITIN W. SAMBRE, J.

DATE: OCTOBER 17, 2022

P.C.:-

1] This Second Appeal is against the concurrent findings recorded by the Courts below. The Court of Civil Judge, Junior Division, Pandharpur has partly decreed the Special Civil Suit No.60 of 2007 for recovery of money. The said judgment and decree was confirmed in appeal being Regular Civil Appeal No.163 of 2013 decided by District Judge-1, Pandharpur on 31/01/2017.

2] The question of law which Mr. Chavan, Counsel for the Appellant has tried to agitate is, whether both the courts below committed an error in recording finding that the suit claim is within limitation as per the provisions of Article 113 of the Limitation Act, particularly when suit claim was brought in action on 8/8/2007 for

the recovery of amount for the period from 19/9/1989 to 30/11/1997.

3] So as to substantiate his contentions, Mr. Chavan has invited my attention to the finding recorded by the Appellate Court that fact about receiving salary from territorial army by the Appellant was within the knowledge of the Respondents/Plaintiffs as could be noticed from the letter dated 8/5/1993 and 11/2/1994 which were issued by competent authority/territorial army.

4] Facts necessary for deciding the appeal are as under:-

5] Appellant was initially appointed as Traffic Inspector in 1984 with MSRTC and was promoted to the post of Assistant Traffic Superintendent, Solapur Division from 27/7/1987. Appellant was having an intention to serve Territorial Army and accordingly upon no objection issued by the Respondents and keeping his lien over the post on which he was lastly posted, Appellant was permitted to join the Territorial Army. During his working with Territorial Army for a period from 1987 to 1997, it is alleged that Appellant has received salary from both i.e. Respondents-Employer/MSRTC so also Territorial Army. As such, suit in question was initiated for recovery of an amount of Rs 5,52,820/-.

6] Both the Courts below have concurrently held that Appellant is liable to repay the amount which he has received in the form of salary

with interest.

7] As far as contention of Mr. Chavan as regards issue of limitation is concerned, though he has invited my attention to the fact which can be construed to be Respondents having knowledge about the Appellant receiving salary from Territorial Army by relying on communications dated 8/5/1993 and 11/2/1994, fact remains that Respondents-Corporation have noticed about Appellant's getting salary from both the Employers i.e. Territorial Army and the Respondents herein from Audit Report. Fact remains that it has been specifically claimed in the suit that the Appellant in deceitful manner has received salary from both the Employers for very same period which speaks of his intention to defraud the Corporation who are managing their affairs on the public money. It appears that Respondents/Plaintiffs have made out a case that they were under the impression that Appellant was serving with Territorial Army and he was not receiving salary from them and as such continued to pay him salary by depositing the same in his Account. Fact remains that the Appellant at no point of time has informed the Respondents/Plaintiffs that he was receiving salary from Territorial Army but rather continued to receive salary from both the Employers. Lastly, Appellant was served with notice through lawyer, calling upon him to repay the amount of Rs 5,52,820/- on 24/6/1998 and cancelling no objection given to the Appellant for continuing in the employment of Territorial Army. Appellant was directed to join services of MSRTC by communication dated 20/5/1998. Aforesaid action of the

Respondents/Corporation was questioned by the Appellant before this Court in Writ Petition No.2609 of 1998 in which order directing the Appellant to continue in the service of Territorial Army was passed and recovery as was directed was stayed. It appears that this Court thereafter while deciding Writ Petition on 13/4/2005 has observed that the Respondents/Corporation shall be at liberty to follow due process of law for recovery of the amount paid to the present Appellant. It is also noted that Appellant has received illegally salary to the tune of rs 4,98,968/- for a period from 19/9/1989 to 31/11/1997.

8] After appreciating the evidence on record, both the Courts below have noted that the Appellant was entitled to receive salary from MSRTC from 2/6/1984 to 18/9/1989. However, for a period from 19/9/1989 to 30/11/1997 he has drawn salary from both the Employers. Subsequent thereto, his Petition was decided by this Court as noted hereinbefore i.e. on 13/4/2005. As such, having regard to the provisions of Article 113, suit that was initiated by the Respondents/Corporation on 8/8/2007 cannot be said to be beyond the period of limitation as rightly so held by both the Courts below.

9] In my opinion, present Second Appeal against concurrent findings lacks any question of law and same is accordingly dismissed. Pending Civil Application(s) stands disposed of.

(NITIN W. SAMBRE, J.)