

1090.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Regular Second Appeal No.1720 of 1991 (O&M)

Date of decision: 23.12.2015

The State of Punjab through Collector, Jalandhar, District Jalandhar.
... Appellant

versus

Sarwan Singh son of Shri Karam Singh Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Yatinder Sharma, Additional Advocate General,
 Punjab, for the appellant.

M. Shakshi, Advocate,
for Mr. Puneet Jindal, Senior Advocate,
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (*Oral*)

1. The appeal had been admitted without framing any substantial question and hence, the same is framed as follows:-

Whether the impugned order directing punishment of deduction in pay with cumulative effect passed on 14.02.1983 not barred by limitation by the institution of suit on 25.04.1988 which is more than 3 years after the institution of the suit?

ii) Whether the lower appellate court was not in error in finding the proceedings to be vitiated for having passed the order on the same day when the notice of hearing was fixed and without following the procedure of framing charges and furnishing documents in the manner required under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970?

2. The issue of whether the proceedings were followed correctly and whether there involved any violation of the statutory rules has been dealt with by the lower appellate court by making reference to the rule that requires the Enquiry Officer to furnish the documents not later than 30 days before the commencement of the examination of the witnesses and even if he absented himself, the rule requires that the enquiry would only call upon the Presenting Officer to produce the evidence of which he proposed to prove the articles of charge and adjourn the case to a date not exceeding 30 days. The lower appellate court observed that the case could not have been taken up on the same day and proceeded with enquiry without even framing the articles of charges against him. Finding that there had been violation of the statutory rules, it found that the punishment imposed was illegal and if the decision was illegal, there was no bar of limitation.

3. I have no difficulty in acceding to a reasoning adopted by the lower appellate court that there had been no fair opportunity for the plaintiff to prepare for the enquiry before the Enquiry Officer, the violation complained of is justified and I hold the decision taken was violative of the rules and hence could not be supported.

4. Even while upholding the lower appellate court finding, I must state the law correctly as regards the issue of limitation. If it is an illegal order, if that order operated against the plaintiff's interest, the plaintiff is bound to resort to an action within a period of 3 years from the date of the impugned decision. The preponderance of the law that was applied by this court that there is no limitation for setting aside an illegal order was expressly dealt with by the Supreme Court in **State of Punjab and others Versus Gurdev Singh-1991(4) SCC 1** and held that the law laid down by this court was not correct and the suit has to be instituted within a period of 3 years. I must observe at the same time that unlike a case of termination of service where the relationship between the employer and employee takes immediate effect and provides a single cause of action, an order withdrawing increments or imposing a punishment modifying the scales of pay with cumulative effect, there shall be a recurring cause of action of every occasion when he draws his salary and, therefore, the order could be brought in

challenge in respect of deduction in salary that the employee had suffered for any period so long as he was in service and so long as his scales of pay were effected by the impugned decision. This has been held so in **Malkiat Singh Versus State of Haryana-2007(4) SCT 801**. Even while upholding the decision of the appellate court, I modify the benefits that could accrue to the respondent-plaintiff to be restricted for a period of 38 months prior to the institution of the suit and the impugned order reducing the scales of pay shall be taken as invalid and the correct scales of pay shall be worked out notionally and the actual benefits will be granted for the period prior to the institution of the suit for a period of 38 months and all future benefits will accrue treating the impugned order made to be invalid in the light of discussion made above.

5. The appeal is dismissed but the decision of the lower appellate court with reference to the benefits will stand modified to the above extent.

(K.KANNAN)
JUDGE

23.12.2015
sanjeev