

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 655 of 1991 (O&M)
Date of decision:- 12.03.2015

State of Punjab through Collector ...Appellant

Versus

Sham Lal Conductor ...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Vaibhav Sharma, DAG, Punjab

RITU BAHRI J. (Oral)

This regular second appeal is against the judgment and decree dated 05.11.1990 passed by learned Addl. District Judge, Ferozepur whereby the judgment and decree dated 20.09.1988 passed by learned PCS Senior Sub Judge, Ferozepur was set aside and appeal was allowed

The plaintiff/respondent (herein after to be referred as 'the respondent') filed a suit challenging the order stopping his annual increment, being illegal and ultravires.

The respondent alleges that he is a civil servant entitled to protection of the PCS (Punishment and Appeal) Rules, 1970 (for short 'the rules') and article 311 of the Constitution of India. No charge sheet or show cause notice was served upon him before passing the impugned order and the penalty was not permissible without conducting a

regular enquiry. The trial Court while dismissing the suit of the plaintiff held that the order imposing the penalty of the stoppage of one actual increment of the respondent was passed on 22.11.1972 in the presence of the respondent and the order was passed by the General Manager, who is the appointing and punishing authority in respect of the conductors like the respondent and also passed after observing the procedure prescribed under Rule 10 of the Rules. The respondent was required to impeach the order within three years, if so required. The suit was filed on 06.03.1987 after a period of 15 years and was thus held to be time barred.

The respondent filed an appeal against the judgment of the trial court and the lower Appellate reversed the finding of the trial Court and allowed the appeal and held that the order in question had been passed against the procedure prescribed in Rule 10 of the Rules as no show cause notice was served upon the respondent and the suit filed by the respondent was not time barred. This issue has come up for consideration before Hon'ble the Supreme Court in a case of State of Punjab and others vs. Gudev Singh and Ashok Kumar, 1991(3) S.C.T 91 whereby it was held that the limitation is of 03 years will be applicable even in case of a void order.

Applying the ratio of the above said judgment, the appeal is allowed and judgment and decree dated 05.11.1990 passed by learned Addl. District Judge, Ferozepur is hereby set aside and the judgment dated 20.09.1988 passed by the trial Court is hereby upheld.

March 12, 2015
G Arora

(RITU BAHRI)
JUDGE