

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

**Regular Second Appeal No.991 of 1991 (O&M)
Date of decision:19.03.2015**

The State of Punjab

.....Appellant

Versus

Amrik Singh

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vaibhav Sharma, DAG, Punjab,
for the appellant.

None for the respondent.

Ritu Bahri, J.

State of Punjab-defendant has come up in regular second appeal against the judgment of reversal dated 03.01.1991 passed by the Additional District Judge, Hoshiarpur, whereby appeal filed by the plaintiff-respondent against the judgment and decree dated 30.07.1990 passed by the Sub Judge, III Class, Hoshiarpur, had been accepted and his suit for declaration had been decreed.

Amrik Singh-plaintiff filed a suit on 05.01.1988 challenging the order dated 20.10.1978 passed by the General Manager, Punjab Roadways, Hoshiarpur and the order dated 05.05.1981 passed by the Divisional Manager, Transport Department, Punjab, Chandigarh-appellate authority, vide which, the services of the plaintiff-respondents were terminated. Plaintiff was appointed as a driver in Punjab Roadways, Punjab, in the year 1965. He proceeded on leave w.e.f. 04.05.1978 to 12.10.1978 after getting the same sanctioned from the competent authority. However, due to some unavoidable circumstances, he applied for further extension of leave which

he presumed to have been sanctioned. Thereafter, when he visited the office to join the duty, he was told that his services had been terminated w.e.f. 14.05.1978 vide impugned order dated 20.10.1978. Against the said order, he preferred an appeal before the Divisional Manager, Transport Department, Punjab, Chandigarh, which was dismissed.

Upon notice, the defendants-appellants filed written statement and controverted the allegations levelled by the plaintiff. It was submitted that leave of the plaintiff was not sanctioned upto 12.10.1978. He had intentionally remained absent from duty and failed to join the same despite sending of many messages. Consequently, his services were terminated vide impugned order passed by the General Manager, Punjab, Roadways, Hoshiarpur. It was denied that the impugned order of termination was illegal or invalid.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the order No.21054 dated 20.10.1978 passed by the General Manager, Roadways, Hoshiarpur and order No.6856-57/LA dated 05.01.1981 passed by the Divisional, Manager, Transport Deptt. Punjab, Chandigarh, Division Chandigarh, are illegal, ultravires as alleged? OPP
2. Whether the plaintiff is entitled to the declaration as prayed for? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the suit is time barred? OPD
5. Whether the suit is bad on account of non-joinder of necessary party? OPD

6. Relief.

The trial Court, after going through the evidence led by the parties, dismissed the suit on the ground that it was barred by limitation.

The lower appellate Court, on appeal, set aside the judgment of the trial Court and held that the termination orders dated 20.10.1978 and 05.01.1981 were void orders as the plaintiff-respondent was not served with any show cause notice and charge-sheet. No enquiry was conducted against him. It was further held that the services were terminated without resorting to the procedure, contemplated under the Punjab Civil Services (Punishment and Appeal) Rules. As per the enquiry file, Ex.D1, after the plaintiff-respondent had absented from duty, he was informed by telegram dated 16.05.1978, letters dated 11.07.1978 & 14.08.1978 and also through publication, to join the duty. The impugned orders of termination were held to be void as they were not passed after conducting due enquiry and giving sufficient opportunity to the plaintiff. It was further held that the suit was not barred by limitation as there was no limitation for challenging a void order. Ultimately, the suit was decreed and the plaintiff-respondent was held entitled to join duty without back wages w.e.f. 04.05.1978 till he joined his duty. Hence, this appeal.

Learned counsel for the defendant-appellant has referred to the judgment passed by the Hon'ble Supreme Court in **State of Punjab and others Vs. Gurdev Singh and Ashok Kumar**, 1991 (4) SCC 1 and contended that limitation for challenging a void order is three years.

In the present case, the order of termination is dated 20.10.1978, whereas the civil suit was filed after almost 10 years i.e. on 05.01.1988.

Hence, as per the judgment of the Hon'ble Supreme Court in **Gurdev**

Singh's case (supra), the suit was clearly barred by limitation. The trial Court had rightly dismissed the suit vide judgment dated 30.07.1990.

On this ground, the impugned judgment dated 03.01.1991 passed by the lower appellate Court is set aside and the suit of the plaintiff is dismissed being time barred.

Present appeal stands allowed accordingly.

19.03.2015
ajp

(RITU BAHRI)
JUDGE