

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

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**RSA-1126-1989 (O&M)
Date of decision: 27.08.2016**

Karnail Singh

.... Appellant

Versus

State of Punjab and another

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Akaant Kumar Mittal, Advocate for the appellant.

Mr. Rupam Aggarwal, DAG,

P.B. Bajanthri, J. (Oral)

The appellant has assailed the order dated 21.02.1989. The appellant was a Conductor in the 2nd respondent Department. On certain allegations he was subjected to disciplinary proceedings, which was ended in imposing the penalty of stoppage of 1 increment with cumulative effect on 15.05.1979.

2. Feeling aggrieved by the order of penalty he preferred a suit before the trial Court on 24.09.1986. The trial Court decreed the suit in favour of the appellant. The respondents aggrieved by the order of the trial Court dated 24.09.1986 preferred an appeal before the appellate court. On 21.02.1989, State appeal was allowed on the ground of limitation that suit

was belated. The appellant has assailed the order of the appellate Court dated 21.02.1989 in the present appeal.

3. Learned counsel for the appellant submitted that this Court in the case titled as *Malkiat Singh versus State of Haryana* reported in 2007(4) SCT 801 and *State of Punjab versus Shri Premjit and another* reported in 2010(5) SLR 385 in which it is held that even as a measure of penalty if there is a stoppage of increment there would be recurring cause of action. Therefore, limitation in so far as challenged to penalty of stoppage of increment may not arise. In so far as merit is concerned, learned counsel for the appellant submitted that imposing penalty vide Ex.P-4 is not a speaking order for the reasons that it is in cyclostyle (fill in the blanks). In other words, there is no application of mind or speaking order while imposing the penalty.

4. On the other hand, learned counsel for the respondent submitted that penalty was imposed on 15.05.1979 whereas, the suit was filed in the year 1986 therefore, rightly the trial court has held that on the ground of limitation the suit is barred by limitation.

5. Heard learned counsel for the parties.

6. Perusal of the judgments of this court, it is suffice that question of limitation do not arise where the withholding of increment is a measure of penalty. Hence, the appellate court has erred in holding that suit is barred by limitation. Insofar as merit is concerned Ex. P4 has been perused. It is in cyclostyle. Some of the matters have been filled up by man script in other words, ready made form has been used for the purpose of imposing penalty

which shows that there is total non-application of mind and also it is not a speaking order.

7. In view of these facts and circumstances, appellate court decision dated 21.02.1989 is set aside.

8. Appeal stands allowed.

27.08.2016
pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons Yes/No

Whether Reportable: Yes/No