

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

Date of decision: 15.02.2017

RSA No.1364 of 1988

Gurdial Singh

...Appellant

Vs.

Punjab State & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: None for the appellant.

Mr. Inder Pal Goyat, Addl. AG, Punjab.

RAJIV NARAIN RAINA, J. (ORAL)

No one appears on behalf of the appellant despite notice in the cause list that adjournments will not be granted in old appeals taken up in urgent list for final disposal. Since it is an old appeal, I have proceeded to hear the Law Officer for Punjab for final disposal and with his help have perused the record on file.

The appellant, a policeman, was inflicted punishment of three years of approved service for proven absence from duty without authorized leave. The second charge was commission of misconduct while standing on duty under the influence of alcohol. The punishment order was passed on 10.01.1978. The appeal to the Deputy Inspector General of Police, Jalandhar Range, Jalandhar was dismissed on 26.05.1978. The revision was filed after a lapse of five years of the dismissal of the appeal, which was dismissed as barred by time on 17.02.1984 by the Inspector General of Police, Punjab, Chandigarh. The appellant filed the civil suit from where this appeal arises on 21.11.1984. The suit was decreed by the Senior Sub Judge, Gurdaspur on 19.03.1986. The State went in appeal. The learned Additional District Judge,

Gurdaspur accepted the appeal and reversed the judgment and decree of the trial Court dismissing the suit vide judgment and decree dated 04.12.1987. The learned lower Appellate Court non-suited the appellant on bar of limitation. The Additional District Judge has held that the cause of action arose to the plaintiff with the dismissal on 10.01.1978, when the right to sue accrued. This was for the reason that the revision petition carried to the Inspector General of Police was filed after expiry of five years and, therefore, the cause of action could not be postponed as the revision was not filed within reasonable time and within the time prescribed in the Rules. Even the Inspector General of Police dismissed the revision on point of limitation holding that the revision was badly barred by time. The revision was in the nature of a mercy petition submitted on 23.08.1983. If the suit was filed after about four years of the expiry of time prescribed by law, then the period of limitation could not be extended by law.

That apart, the learned Lower Appellate Court examined the issue on merits and held that even if the order dated 17.02.1984 could give rise to fresh lease of limitation, even then the onus on issue No.2; whether the suit is within time, was on the plaintiff/appellant and the trial Court had recorded categorically in the judgment that the issue was not pressed at the time of arguments. It was given up. In view of the statement made the case of the appellant was completely foreclosed from claiming relief even assuming the order of punishment was void. See - State of Punjab & others Vs. Gurdev Singh & Ashok Kumar, AIR 1991 SC 2291, holding that limitation runs against void orders. This obviates examination of the quality of the orders impugned in the suit.

Thus, I find no substantial error in the judgment and decree passed by the lower Appellate Court to interfere on the second appeal side of this Court and would accordingly dismiss the appeal.

15.02.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>