IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 02.05.2017

RSA No.757 of 1992

Gurdev Singh ...Appellant

Vs.

The State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K.Malik, Senior Advocate, with
Mr. Tejpal Singh Dhull, Advocate, for the appellant.

Mr. R.T.Redhu, DAG, Haryana,
for the respondent.

RAJIV NARAIN RAINA, J. (ORAL)

In this appeal, the fact of the matter is that four major penalties of stoppage of one increment; stoppage of two increments with cumulative effect; stoppage of two increments with cumulative effect and stoppage of one increment with cumulative effective have been imposed upon the appellant vide orders dated 02.01.1973; 26.06.1973; 17.10.1973 & 11.04.1974 respectively. All of which adverse orders were conveyed to the appellant as late as on 06.02.1979, a position admitted in the testimony of DW-1 Amir Chand appearing for the management as its witness.

The learned senior counsel, Mr. R.K.Malik has pointed out to the extract of the evidence where the witness, namely, Amir Chand deposed that "according to the record all orders were served in year 1979 before this they were not served". If they were not conveyed, then there is no gainsaying, limitation would not run from the date the orders were passed, but when they were served. In State of Punjab Vs. Amar Singh Harika, AIR

1966 SC 1313, P.B.Gagendragadkar, CJI, speaking for the Constitution Bench of the Supreme Court held as to when a dismissal order takes effect, which principles is true to an order of punishment as in this case, observing:

> "It is plain that the mere passing of an order of dismissal would not be effective unless it is published and communicated to the officer concerned. If the appointing authority passed an order of dismissal but does not communicate it to the officer concerned, theoretically it is possible that unlike in the case of a judicial order pronounced in Court, the authority may change its mind and decide to modify its order. It may be that in some cases, the authority may feel that the ends of justice would be met by demoting the officer concerned rather than dismissing him. An order of dismissal passed by the appropriate authority and kept with itself, cannot be said to take effect unless the officer concerned knows about the said order and it is otherwise communicated to all the parties concerned. If it is held that the mere passing of the order of dismissal has the effect of terminating the services of the officer concerned, various complications may arise. If before receiving the order of dismissal, the officer has exercised his power and jurisdiction to take decisions or do acts within his authority and power, would those acts and decisions be rendered invalid after it is known that an order of dismissal had already been passed against him? Would the officer concerned be entitled to his salary for the period between the date when the order was passed and the date when it was communicated to him? These and other complication would inevitable arise if it is held that the order of dismissal takes effect as soon as it is passed though it may be communicated to the officer concerned several days thereafter."

Mr. Malik explains that since all the four orders were communicated on 06.02.1979, the appellant was advised by his authorized representative to move the Labour Court by an application under Section 33C(2) of the Industrial Disputes Act, 1947 to claim relief. Those proceedings went on from 19.02.1979 to 07.02.1986, when ultimately the Labour Court turned down the application as not entertainable in execution proceedings and showed the door of the Civil Court to the appellant. That is what brought the suit on 07.08.1986. The period spent from 19.02.1979 to 07.02.1986 deserves to be excluded under the exception in Section 14 of the Limitation Act, 1963 since the appellant was bona fide pursuing remedy as per the legal advice given to him. If that period is excluded, then the case falls within limitation and the findings to the contrary of the Courts below on limitation have to be set aside. Both the Courts below did not appreciate that an order entailing evil civil consequences cannot take effect unless it is communicated and brought to the knowledge of the party affected. This is like passing an adverse order and keeping it in the Officer's drawer never to see the light of day. Then what effect can such an order have on the rights and liabilities of a delinquent, is not hard to fathom.

The first Appellate Court has misread the judgment in State of Punjab & others Vs. Gurdev Singh & Ashok Kumar, AIR 1992 SC 111, that limitation runs from the date adverse order was passed. Be that as it may the limitation would start run only from the date of communication of the order and, therefore, the principle in *Gurdev Singh* does not inhibit the remedy or destroy the cause of action. The right to sue begins when the order is placed in the hands of the delinquent enabling him to challenge it. Thus, the findings of the Courts below on the issue of limitation are erroneous and liable to be set aside.

Moreover, all these four orders have been passed without holding regular enquiry by following procedure of minor punishments and the law is settled that cannot be done since the Supreme Court delivered judgment in Kulwant Singh Gill Vs. The State of Punjab, 1991 (2) SCT 30;

(1991) 1 Suppl. SCC 504, holding that imposing penalty of stoppage of increment/s with cumulative effect falls within the ambit of Rule 5 (v) of the Punjab Civil Services (Punishment & Appeal) Rules, 1970. A regular enquiry is a must before such major punishment is inflicted on an employee. Seeking explanation or calling for a reply is not a substitute for a regular enquiry. Therefore, the impugned orders could not be sustained. The first Appellate Court rightly applied the law in *Kulwant Singh Gill* reversing the judgment of the trial Court on the point and declared the orders illegal, but non-suited the plaintiff appellant on bar of limitation holding the suit was barred by time.

Since this Court answered the question of limitation in favour of the appellant, Mr. Redhu for the State submits that if the appeal is to be allowed, then the State should be given the liberty to hold a regular enquiry against the appellant. I may have accepted this attractive argument following the Supreme Court ruling in Managing Director ECIL Vs. B. Karunakar, (1993) 4 SCC 737: AIR 1994 SC 1074 to return parties to the mistake, but when such long time has elapsed it may not be a fair thing to do where witnesses may not be present or available or documents lost to mildew or weeded out, I would not accede to this request and remit this matter to disciplinary authority to hold a regular enquiry.

Consequently, the appeal is allowed, the judgment and decree of the Courts below are set aside and the suit is partly decreed. The amounts arising out of the decree be determined and paid to the plaintiff-appellant within a period of four months from the date of receipt of certified copy of this order. Not only this, the last pay drawn and as a result pension of the plaintiff - appellant shall be re-fixed by restoring all the increments illegally withheld with consequential service benefits as though the four impugned orders were never passed. However, the actual monetary benefits from 19.02.1979 to 07.02.1986 shall be excluded from the back wages, as that period was spent in the labour court by the appellant and for that the State cannot be burdened with money as it is not its fault. There will also be no interest on the arrears.

02.05.2017 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*