

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.779 of 1994

Date of Decision: 19.1.2017

Sukhwinder Singh

... Petitioner

Versus

State of Punjab & anr.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. RN Moudgil, Advocate,
for the petitioner.

Dr. Puneet Kaur Sekhon, Addl.A.G., Punjab.

RAJIV NARAIN RAINA, J.(Oral)

The petitioner was inflicted penalties from time to time of withholding in total 7 annual increments permanently vide orders dated 29.11.1978, 26.4.1979 and 10.6.1983. The appellant challenged those orders by bringing civil suit on 31.7.1989 in the Court of Sub Judge, IIIrd Class, Pathankot, presently designated Civil Judge (Junior Division). The suit was decreed on the ground that the orders had not been conveyed and these were illegal and void orders against which limitation did not stop running.

The legal position on 15.3.1991 when the Trial Court decreed the suit was governed by the law laid down by two division benches of this Court in State of Punjab v. Ram Singh, (1986) 2 SLR 379 and State of Punjab v. Ajit Singh, (1988) 1 SLR 1996 holding that even against illegal and void orders limitation would not run and aggrieved party can approach court at any time and pray for the quashing of void orders. Those two decisions were overruled by the Supreme Court in the State of Punjab & ors. v. Gurdev Singh, AIR 1991 SC 2219. The Supreme Court applied the

residuary Article 113 of the Limitation Act, 1963 to declare the law in the two division bench judgments of this Court as bad in law. It was authoritatively declared that limitation ran against void or voidable orders. Though the case involved dismissal from service but the principle applies to all adverse orders passed in service law of every kind which visit adverse civil consequences on employees. What is true for dismissal is true for an order of punishment of withholding of annual increments with cumulative effect, which is a major penalty. During the appeal filed by the State of Punjab against the decree, the law was declared in *Gurdev Singh's case* and therefore, the learned Additional District Judge, Gurdaspur applied the law in *Gurdev Singh's case* and set aside the judgment and decree of the trial court and dismissed the suit as barred by limitation.

It is Mr. Moudgil's submission that both the Courts below held the order to be illegal and void and that even if the law in *Gurdev Singh's case* applied even then the law can operate only for the date of knowledge of the adverse order against which this appeal has been filed. It is his contention that the three impugned orders were never conveyed to the plaintiff/ appellant. The appellant was a Conductor in Punjab Roadways. The impact of the punishment orders was such that increments are not to be added on annual basis till the penalty lasts and thereby reduces salary in the pay scale and it can reasonably be presumed that at least when the annual increment falls due in the coming year, the employee would have constructive knowledge of something remiss in financial loss caused every month by the punishment. When the impact of such adverse order becomes apparent in monthly salary drawn, then there will be a presumption that the appellant knew that he was under major punishment of seven increments

withheld with permanent effect. There will be presumption say in June 1984 that he had knowledge of the orders. He cannot innocently plead he did not know of them till years later when the limitation for challenging those orders had long run out, keeping his right preserved but the remedy extinguished. If he had no knowledge of the orders, even then he did not approach Court for another 6 years. This Court would not buy the theory that the orders were not conveyed and therefore the law in *Gurdev Singh's* case does not apply. The finding of fact arrived at by the first appellate court indicates service and knowledge of the impugned orders. If there is a presumption of service, it is extremely strong. I would therefore reject the argument advanced by Mr. Moudgil that the orders were not conveyed and therefore the suit was within limitation.

Accordingly, I find no merit in this appeal warranting interference with the work of the lower appellate court when proper reasons are recorded in allowing the State appeal. Besides, no questions of law much less substantial arise in appeal under Section 100 CPC or Section 41 of the Punjab Courts Act for consideration on the second appeal side of this Court. Accordingly, the appeal fails and is dismissed, however, without any order as to costs.

(RAJIV NARAIN RAINA)
JUDGE

19.01.2017
monika

Whether speaking/reasoned *Yes*

Whether reportable *No*