

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

428

**RSA No.1574 of 2006 (O&M)
Date of Decision : 08.12.2017**

Keshav Krishan

..... Appellant

Versus

Department of Punjab State Civil Supply Corpn. Ltd.,
Chandigarh and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. R.S.Bajaj, Advocate
for the appellant.

Ms. J.K.Gurna, Advocate
for the respondents.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the Courts below dismissing the suit filed by the appellant-plaintiff.

The appellant-plaintiff had challenged the order dated 19.04.1991 imposing upon him the punishment of stoppage of one increment with cumulative effect and order dated 28.06.1995 rejecting his appeal. The suit was filed on 25.08.1998 i.e. almost exactly 3 years and 2 months after the appellate order.

Both the Courts below held that the punishment was vitiated on the ground that inquiry had not been conducted in accordance with law but non-suited the appellant-plaintiff on the ground of limitation. His plea that he had to be given 2 months for notice was rejected because the

by the State Government. The two issues before this Court are :-

- (i) *Whether the suit was barred by limitation;*
- (ii) *If the suit is maintainable to what relief the appellant would now be entitled.*

As regards the first issue learned counsel for the appellant-plaintiff has relied upon ***Tarsem Singh Vs. Punjab State and another, 2013***

(2) SCT 338. The relevant paras are quoted herein below :-

“6. Learned counsel for the appellant has however placed reliance of Union of India and others versus Tarsem Singh (2008) 8 SCC 648 wherein the Hon'ble Supreme Court has held as follows :-

“To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale

and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

9. *Resultantly, both the questions of law proposed have to be answered in favour of the appellant. Consequently, the judgment and decree dated 16.12.1987 is set aside and that of the trial Court dated 4.8.1986, it has to be allowed since by these orders punishment of stoppage of increment with cumulative effect was imposed without holding any inquiry. However, the benefit thereof would be granted to the appellant only for a period of 3 years and 2 months prior to the date of filing of the suit viz 28.3.1985.”*

He has further relied upon ***State of Punjab Vs. Mohan Singh, 2007 (3) SCT 751***. In all these cases it has been held that a punishment of stoppage of increment with cumulative effect constitutes a continuing cause of action since the effect thereof is felt by the employee through out the career and therefore a suit challenging such a punishment can not be dismissed on the ground of limitation though the relief can be modulated in such a manner so as to bring it within the period of limitation. Faced with the situation that the suit can not be held to be barred by limitation learned counsel for the respondents has relied upon ***Managing Director, ECIL, Hyderabad and others v. B. Karunakar and others***, reported as ***(1993) 4 Supreme Court Cases 727*** to contend that if there is a fault in the procedure the Court should set aside the final order and send the matter

back from that stage for a fresh decision as per law.

Learned counsel for the appellant-plaintiff has argued that he has no quarrel with this proposition of law but the facts of the present case are too stark to admit of such a course of action. As per him the incident took place almost 30 years ago and the punishment order was passed more than 2 ½ decades ago. The appellant-plaintiff has long since retired more than a decade ago and in this connection he has relied upon ***Allahabad Bank & Ors. Vs. Krishna Narayan Tewari, 2017 (1) SCT 649***, para 8 of which is quoted herein below :-

“8. There is no quarrel with the proposition that in cases where the High Court finds the enquiry to be deficient either procedurally or otherwise the proper course always is to remand the matter back to the concerned authority to redo the same afresh. That course could have been followed even in the present case. The matter could be remanded back to the Disciplinary Authority or to the Enquiry Officer for a proper enquiry and a fresh report and order. But that course may not have been the only course open in a given situation. There may be situations where because of a long time lag or such other supervening circumstances the writ court considers it unfair, harsh or otherwise unnecessary to direct a fresh enquiry or fresh order by the competent authority. That is precisely what the High Court has done in the case at hand. The High Court has taken note of the fact that the respondent had been placed under suspension in the year 2004 and dismissed in the year 2005. The dismissal order was challenged in the High Court in the year 2006 but the writ petition remained pending in the High Court for nearly seven years till 2013. During the intervening period the respondent superannuated on 30th November, 2011. Not only that he had suffered a heart attack and a stroke that has rendered him physically disabled and

confined to bed. The respondent may by now have turned 65 years of age. Any remand either to the Enquiry Officer for a fresh enquiry or to the Disciplinary Authority for a fresh order or even to the Appellate Authority would thus be very harsh and would practically deny to the respondent any relief whatsoever. Superadded to all this is the fact that the High Court has found, that there was no allegation nor any evidence to show the extent of loss, if any, suffered by the bank on account of the alleged misconduct of the respondent. The discretion vested in the High Court in not remanding the matter back was, therefore, properly exercised.”

Learned counsel for the respondents is not in a position to cite any contrary judgment.

Both the Courts below though have held that the inquiry against the appellant-plaintiff was not conducted as per law but the appellant-plaintiff was non-suited on the ground of limitation. In view of the legal proposition referred to above the case of the appellant-plaintiff can not be thrown away on the ground of limitation but the ultimate relief can be restricted.

In this view of the matter, the appeal is allowed. The suit of the appellant-plaintiff is decreed and the order dated 19.04.1991 vide which punishment of stoppage of one increment with cumulative effect was imposed, is set aside. The respondents are now directed to work out all the benefits which are due to the appellant-plaintiff and pay him within a period of 3 months from the receipt of certified copy of this judgment failing which, the appellant-plaintiff would be entitled to claim the same

date of payment. The benefits which are to be released to the appellant-plaintiff would be restricted to 36 months prior to the filing of the suit.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

08.12.2017
pooja sharma-I

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No