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

RSA No.2177 of 2015 (O&M)
Date of decision: 18.04.2017

Jagir Singh .... Appellant

vs

Haryana Vidyut Prasaran Nigam Ltd. and ors. .... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ashutosh Kaushik, Advocate
for the appellant.

Mr. Suvir Sehgal, Advocate
for the respondents.

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RAJIV NARAIN RAINA, J. (ORAL)

This is a second appeal. The point in issue is short. The appellant has rightly given up his claim to prayers from (a) to (c) of the total six prayers he made in the suit filed in the Civil Court at Kurukshetra. The three subsisting prayers which fall for consideration are as follows:

> "d) ACP – Ist and ACP-2nd pay scale w.e.f. 01.01.1996 after completion of 10/20 years of service,
> e) revision of retiral benefits i.e. pension, commutation of pension, leave encashment and gratuity and for proper fixation of pay, accordingly,
> f) arrears, thereof, along with interest at the rate of 18% per annum, with consequential relief of mandatory injunction directing the appellants to grant the above stated reliefs to the plaintiff-respondent, was decreed partly."

The learned trial court decreed the suit but the learned Addl. District Judge, Kurukshetra upheld the findings of the trial court on merits but applied the law in 'State of Punjab vs. Gurdev Singh', AIR 1991 SC 2510, holding that the suit is barred by time. The plaintiff-appellant was non suited. The Judge also noticed the decision of the Supreme Court in 'State of Punjab vs. Bal Karan Singh', AIR 2007 SC 647 to reinforce his view that the claims were time barred.

In *Gurdev Singh's* case (supra) the Supreme Court dealt with a case involving the dismissal of an employee from service while in *Bal Karan Singh's* case (supra) the Supreme Court had occasion to consider a case where an administrative order was passed refusing revised scale of pay to the respondent. In such situations, the cause of action accrues and time begins to run when right to sue arises. If a suit proceeding is not brought within three years from the date of expiry of the cause of action, the claim is barred by time and suit must fail on maintainability. However, the present is a case where the cause of action is recurring and loss is occasioned on day-to-day basis, and thus every day creates a fresh and continuing cause of action by the passing day, by the passing month and by the passing years. The claim for 1st and 2nd ACP creates a recurring cause of action, which if granted will ultimately effect the pay last drawn and consequently enhancement of pension and other service benefits which would require revision and pay re-fixation.

On the other hand, Mr. Ashutosh Kaushik, counsel for the appellant relies on 'Union of India & ors. vs. Tarsem Singh', (2008) 8 SCC 648, 'M.R. Gupta vs. Union of India & ors.', AIR 1996 SC 669 : (1995) 5 SCC 628 and the division bench of this Court in 'Saroj Kumari & ors. vs. The State of Punjab and others', 1998 (3) RSJ 350 (P&H).

These judgments favour the appellant and are against the respondent – Nigam explaining the principles of recurring rights with relief moulded to three years and two months from the date of presentation of the suit.

Mr. Suvir Sehgal has relied on Balkaran Singh's case (supra), which is not a case which governs the fate of this case as explained since the date of cause of action was pre-determined and the adverse order is to be challenged in legal proceedings within the period of limitation prescribed in Article 113 of Schedule to the Limitation Act, 1963.

The learned Additional District Judge, Kurukshetra fell in error in relying on the rulings in *Gurdev Singh* and *Bal Karan Singh* cases without noticing the distinction between the two set of cases to understand the continuing rights involved in the present case and that relief could always by moulded to deprive the plaintiff of actual payment beyond three years or three years and two months according to the status of the employer while restricting them as in the three cases relied upon by the appellant which cover the dispute-in-issue.

For the above reasons, the appeal is allowed. The arrears of the 1st and 2nd ACP from the due dates mentioned in the suit be determined after re-fixation of pay and the amounts found payable be given to the appellant restricted to 36 months prior to filing of the suit with 6 % interest per annum within a period of three months from the date of receipt of certified copy of this order, failing which the principal sum would earn double the interest till payment.

(RAJIV NARAIN RAINA)
JUDGE

18.04.2017
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1. Whether speaking/non-speaking? Yes
2. Whether reportable/non-reportable? Yes