IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM No.6296-C of 2017 in/and
RSA No.1408 of 2014
Date of decision: 10 .07.2017

Batala Cooperative Sugar Mills Ltd., Batala

...Appellant

Versus

Karam Singh and others

…Respondents

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

Present:- Mr.Rahul Sharma-I, Advocate for the appellant

M.Rakesh Bhatia, Advocate for respondent no.1

RAJIV NARAIN RAINA, J

1. This is defendant's appeal against the judgment of reversal, partially decreeing the suit by restricting the arrears of salary to three years and two months prior to the filing of the suit on 28th January, 2003. The first appellate Court has agreed with the trial court regarding right to the pay scale with effect from the date of promotion i.e. 26th October, 1977 and not from 9th May, 1984 when the promotion was actually made.

2. The case of the plaintiff is that he was promoted as Security Officer on 26th October, 1977. His predecessor-in-interest, Dalip Singh in the grade of Rs.400-30-700-50-1000, but the plaintiff was not granted the said grade on his promotion as Security Officer. The plaintiff made a request for grant of the said grade. Ultimately, a decision was taken by the Board of Directors of the Mills under Agenda

Item No.6 on 9th May, 1984 recommending promotion of the plaintiff as Security Officer. The promotion had to be ratified by the Registrar Cooperative Societies, Punjab, Chandigarh who granted approval to the promotion w.e.f. 9th May, 1984 vide letter No.33701 dated 17th December, 1985 whereas the right of the plaintiff asserted had accrued in the year 1977 when the predecessor-in-interest Dalip Singh was in receipt of grade pay of Rs. 400-30-700-50-1000. That is what the grievance of the plaintiff was when he went to Court in a civil suit.

3. Both the courts below have agreed that the plaintiff has an actionable right and a just claim for rectification of his pay scale w.e.f. 1977. The trial court granted the relief w.e.f. 1977 whereas the learned first appellate court granted the arrears as decreed by restricting payable amount only for a period of three years and two months prior to the filing of the suit. The core fact which is significant in this case is that no order was passed by the Sugar Mills refusing the claim till the plaintiff was promoted o0or thereafter, but still he was kept in the lower scale and to claim the arrears, he instituted the suit on 28th January, 2003.

4. While the trial court was of the view that the cause of action was a recurring one and as such the plaintiff was entitled in the suit for declaration with consequential relief of mandatory injunction and decreed the suit by directing the defendant to grant the plaintiff the grade pay of Rs. 400-30-700-50-1000 w.e.f. 26th October, 1977 instead of 9th May, 1984. The first appellate court has held that though the cause of action is recurring in nature, but the actual monetary benefit can only be granted from three years and two months before the institution of the suit.

5. The argument of the appellant-Sugar Mills is that the suit was not maintainable as remedy qua relief claimed rested with the authorities of the cooperative Mills under Section 55 of the Cooperative Societies Act, 1961. Their counsel argues that the civil suit is barred by Section 82 of the Act.

6. I have considered the argument of the appellant but am not impressed. Section 55 of the Act contains provision that notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a cooperative society arises the same shall be referred to arbitration. The jurisdiction of civil court is barred by Section 82 of the Act with respect to the disputes relating to registration of Society, removal of a committee, winding up and the dissolution of a cooperative society registered under the Act. There is sufficient authority to suggest that Sections 55 and 82 of the Act cover only the disputes touching the management and business of the Society in treating commercial transactions and not with regard to disputes relating to service matters and the terms and conditions of employment. The argument is of no help to the appellant since the cause of action does not touch upon the issues of the Society as a juristic body. Therefore, the suit was maintainable.

7. The only issue which has been seriously debated by Mr. Rahul Sharma, learned counsel for the appellant is whether the cause of action is recurring in nature. If it is not recurring, then suit is barred by time. He would refer to the judgment in <u>State of Punjab v. Balkaran Singh</u>, AIR 2007 (SC) 641 (paragraphs 15 and 16). The issue in *Balkaran Singh* also related to a claim for revised pay scale. In that

case, the Director of Agriculture, Punjab passed an order on 13th March, 1980 refusing the claim for revised pay scale of Rs.1200-1850. The Supreme Court held that suit for declaration is governed by Article 58 of Schedule to the Limitation Act, 1963 and the period prescribed is three years and the *terminus a quo* is "when the right to sue first accrues". The Supreme Court observed that it was not the mere making of an order, but an action that had immediate impact on the right of the plaintiffs to recover a higher salary as per their claim. It is well settled that the time does not stop to run once it has started to run.

8. It was next argued by Mr.Rahul Sharma that cause of action once barred does not get revived. In support of his submission, learned counsel relied on Amrit Lal Berry v. Collector of Central Excise, New Delhi, (1975) 4 SCC 7141. That case is distinguishable since that decision arose from a proceeding directly under Article 32 of the Constitution of India. The case did not arise out of a civil suit. The Supreme Court considered in detail the seven Judge ruling in S.S.Rathore v. State of Madhya Pradesh, 1989 (4) SCC 582 wherein the Constitution Bench has held in suit relating to service matters, that "yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58" There are number of rulings noticed in that matter relating to service law which jurisdiction is governed by Section 58 of the Limitation Act in a claim of the kind brought up. Their Lordships reiterated the law in Mohd. Quaramuddin (Dead) by Lrs. V. State of A.P., (1994) 5 SCC 118; Vasant Ramchandara Deshpande v. State of Maharashtra and Ors. (1997) 11 SCC 305; Rajasthan State Road Transport Corporation and Ors. V. Nand Lal, (1999) SCC (L & S) 658.

9. In <u>State of Punjab and others vs. Gurdev Singh, Ashok Kumar,</u> (1991) 4 SCC 1, a three judge Bench of the Supreme Court held that a party aggrieved by the order, even if it is found to be void, has to approach the Court for relief of declaration complaining that the order against him is inoperative and void within three years of the order. It is one thing to say that the plaintiffs might make a claim that they must also be paid in future at the revised scale of pay of Rs.1200-1850 in view of the decision rendered in favour of another officer of the same department. But that does not enable them to revive a claim for the relief of declaration which had become long ago barred by time. A cause of action once barred does not get revived in such a case. As far as the consequential relief was concerned, the Supreme Court observed in para 17 of *Balkaran Singh* as follows:-

> "17. Once the prayer for declaration sought for in the suits is found to be barred by limitation, it has to be noticed that the prayer that follows is only consequential on the relief of declaration. That prayer is to the effect that the plaintiff is entitled to the pay scale of Rs.1200-1850/- as against the scale of pay of Rs.940-1850/- with effect from 1.1.1978 and entitled for payment of all other service benefits including yearly increments, arrears and interest thereon at the rate of 18 per cent per annum up to the date of payment with effect from 1.1.1978. It must be noticed that there is no independent prayer for recovery of arrears of pay and the prayer is couched in such a manner that it can be understood only as consequential on the grant of the first relief. In other words, it is not an independent relief that could be granted even if the main prayer is declined. In that view, it has to be held that a consequential relief could not be granted in view of the

fact that the main relief of declaration sought for has been held to be barred by limitation."

10. Mr.Rahul Sharma would refer to *Gurdev Singh, supra.* The ruling is cited to emphasize that even void order has to be challenged the action should be brought within limitation, and therefore, the suit of the plaintiff was barred. The argument of the learned counsel appears to be attractive but is found misplaced since in *Gurdev Singh,* supra, the case related to termination of services made in violation of principles of natural justice. The Supreme Court allowed the appeal and dismissed the suit on the ground that the suit was barred by limitation. In that case, the Supreme Court did not deal with the issue as to whether cause of action is recurring or not since there was no occasion to do so. This ruling of the Supreme Court is therefore of not much help to the appellant-Society and cannot be the principle applied to dismiss the suit.

11. Mr.Sharma then relies on judgment rendered in Dalbar Singh and another vs. State of Punjab and others (CWP No.20814 of 2014) decided by me on 7th October, 2014. In this case, there was a delay of two decades in bringing writ petition to this Court claiming, after retirement, unpaid advance increments on the basis of higher qualifications earned through a post graduate degree earned prior to 19th February, 1979. In the case, this court held that such a right to advance increments, if any, deserves to have been agitated during the life of the service of the petitioners. Thereafter, the rigour mortis of limitation appears to set in. Dalbar Singh had appeared before this Court with a prayer that he served legal notice in February, 2014 after having retired from service on superannuation in 2007. Claiming relief after almost 20 years and so I thought the plea should not be entertained on principle of

inordinate delay and laches by negligence to seek legal remedy. I had thus refused to entertain the stale claim, but as I did so, I did this since the case was instituted in original writ jurisdiction and not a case arising out of a suit where stances and postures could be very different. The case is distinguishable on facts and the setting of the case.

12. He then relies on a Single Bench judgment delivered in Harbhagwan Sawhney vs. State of Haryana and others (RSA No.1475 of 2007 decided on 1st December, 2009. Here was brought a claim for grant of revised pensionary benefits on account of having undergone sterilization operation, a concession based on policy instructions to inculcate in Government employees, small family norms. The department had passed a specific order rejecting the claim and in the face of the order, no relief could be granted. This Court applied the principle of law laid down in *Balkaram Singh, supra*. This Court held that unless and until the plaintiff was granted the special increment from the date when he underwent sterilization operation, the question of counting the same towards pensionary benefits did not at all arise. In that case, it was held that only one-time cause of action accrued to the plaintiff on 10th April, 1995 when his claim for the grant of special increment was declined. He could not claim that a recurring cause of action had accrued to him encashable at any time. Plaintiff's claim was dismissed as time barred. The Special Leave Petition No.10200 of 2010 against the judgment in second appeal was also dismissed by the Supreme Court on 12th April, 2010 without assigning reasons, by a single line order without declaring the law.

13. On the other hand, Mr.Rakesh Bhatia, learned counsel for respondent no.1 relied on the ruling in M.R.Gupta vs. Union of India

and others, (1995) 5 SCC 628. In this case, M.R.Gupta served the State of Punjab and thereafter joined the Indian Railways. He claimed that fixation of his pay on joining service of the Railways in 1978 was incorrect and that he was entitled to fixation of pay after adding one increment to the pay which he would have drawn on 1st August, 1978 in accordance with Rule 2018 (N.R.S.N.6447) equivalent to Fundamental Rule 22-C of the Central rules. He claimed proper fixation of his initial pay and certain consequential relief. The Central Administrative Tribunal rejected the claim on the ground of limitation holding that the appellant had been expressly informed by the order dated 12th August, 1985 and by another letter dated 7th March, 1978 that his pay had been fixed and therefore, he should have assailed that order at that time "which was one time action". The delay of 11 years in making the claim was hopelessly barred by time. In appeal, the Supreme Court held that his claim, if any, for recovery of arrears calculated on the basis of difference in the pay scale which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches disentitling claimant to those reliefs. It was to this limited extent of proper pay fixation, the application could not be treated as time barred since it was based on a recurring cause of action injuring the person every day. The Supreme Court observed as under:-

> "The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary

> computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind.(See Thota China Subba Rao and Others vs. Mattapalli Raju and Others, AIR 1950 Federal Court 1)."

14. Mr. Bhatia has also relied on a judgment of this Court in Tarsem Singh vs. Punjab State and another, 2013 (2) SCT 339 which was passed in Regular Second Appeal. In this case, the appellant filed a suit on 28th March, 1985 with a prayer for setting aside the eight orders of punishment stopping increments with cumulative effect and nine orders forfeiting service prior to 19th January, 1973. The impugned orders of punishment stopping increments with cumulative effect were passed between 1970 and 1984. The suit from where the second appeal arose was decreed in favour of the appellant and all the orders were declared null and void by the trial court. The first appellate court reversed the decree of the trial court and dismissed the suit as time barred. The learned Single Judge of this Court set aside the judgment and decree of the first appellate court since the punishment of stoppage of increment with cumulative effect was imposed without holding any inquiry. The relief was restricted to 3 years and 2 months prior to the

date of filing of the suit. While allowing the appeal, the learned Single Judge of this Court followed the principles laid down in Union of India and others v. Tarsem Singh, (2008) 4 SCC 648 wherein the Supreme Court held:-

> "5. 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 re-opening 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. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, 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."

15. Similarly, in S.P.Waghmare v. Shree Dhyaneshwar Maharaj Sansthan, AIR 1959 SC 798, the Supreme Court had held as follows:-

> "It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."

16. I may take the opportunity of paraphrasing those articulated words from the compendium of case law submitted by Mr.Bhatia in the context of this case indicating that in cases relating to wrong fixation of pay, a distinction should be drawn between an injury caused by a wrongful act and the effect of the said injury. However, when an alleged wrongful act causes an injury, which is complete in its civil consequences, there is no continuing wrong even though the damage caused by the injury may continue. Thus, in cases regarding fixation of pay, if no order has been passed specifically fixing or denying the pay scale to an employee, it would be a “continuing wrong” as the salary for each successive month would give a fresh cause of action. However, where an order has been passed fixing a pay scale or denying a pay scale, it would be a “wrongful act” which may cause continuous damage but would not amount to a “continuing wrong”. In

such cases, the order would have to be challenged within the period of limitation.

17. As a result of the above discussion, a distinction will have to be kept in mind of cases in which final orders have been passed and there is delay in approaching and those cases where the issue is at large. If a claim has been made by an aggrieved person in reasonable time and remains pending for an unreasonable long period of time without conclusion at the hands of the competent authority, then cause of action continues running such as in a case of pay fixation leading to reduction in salary every month. However, in all such cases, a distinction would have to be placed by the Court on restricting the relief to 38 months prior to the institution of suit or writ petition or other proceedings, thus balancing the interest of the State and the justice-seeking employee, serving or retired.

18. Mr.Bhatia is on an even stronger footing when he places reliance on the Full Bench decision of this Court in Saroj Kumar vs. State of Punjab, 1998 (3) SCT 664 wherein Court held that where the claim involved is of fixation of pay according to rules or instructions, it is a recurring cause of action for an employee arising every month. Writ petition for such claim cannot be dismissed on ground of delay and laches. This may not be the position in the case of one-time action of dismissal or termination. Pay fixation of an employee does not alter the settled things nor does it affect the rights of any third party. Court can at the most restrict the arrears up to 38 months from the date of filing of the petition. Three years and two months would be considered a reasonable period as that is the period for which a person can ask for the payment of arrears before a civil court. This Court in *Saroj Kumar* has

drawn a distinction between one-time action and continuing injuries. This principle would not apply to one-time action of dismissal or termination. Prayer for pay fixation is a recurring cause of action without doubt. The arguments addressed by Mr. Sharma are accordingly rejected and those of his opposing counsel are found legally sound and thus merit acceptance.

19. For the above reasons, I find no error in the judgment of the first appellate court. The appeal is dismissed and the judgment and decree dated 16th December, 2013 passed by the learned District Judge, Gurdaspur is upheld.

(RAJIV NARAIN RAINA)
JUDGE

10 . 07.2017
MFK

Whether Speaking/reasoned *Yes*

Whether Reportable *Yes*