

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 106

Regular Second Appeal No.4541 of 2017 (O & M)
Date of Decision: September 21, 2017

Banwari Lal

..... APPELLANT

VERSUS

State of Haryana & others

..... RESPONDENTS

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Ms. Gurleen Dhanoa, Advocate, for the appellant.

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Jaspal Singh, J

CM No.11853-C of 2017

For reasons given in the application, delay in filing the appeal is condoned.

Application stands allowed.

RSA No.4541 of 2017

The instant regular second appeal has been preferred by Banwari Lal, plaintiff – appellant challenging judgments & decrees passed by the courts below.

Plaintiff instituted a civil suit seeking a decree for declaration and mandatory injunction to the effect that his date of birth is December 31, 1958 and he has not completed the age of 60 years. He pleaded that he joined the services of defendant Nos.2 and 3 at Fatehabad, as

Chowkidar on May 25, 1982 in the capacity of work charge regular. In the year 1993, when he was working with SDO, Canal Lining Sub-Division No.2A, Fatehabad, he was dismissed from service vide letter No.4617-21/6-E dated October 29, 1993 on the ground of his conviction in some criminal case. Consequently, he filed a civil suit claiming that he was convicted in some other case which was not related with the defendants' department and impugned letter, vide which, he was dismissed be declared null and void being in contravention to the provisions of Article 311 of the Constitution of India.

Defendants contested the suit by filing written statement. Preliminary objections were raised regarding non-maintainability of suit, no cause of action & locus standi, estoppel, jurisdiction & limitation etc. Defendants submitted that plaintiff – appellant was convicted on January 31, 1991 under Section 408 IPC and appeal against his conviction was also dismissed on July 05, 1993. Plaintiff was dismissed from service on October 29, 1993. The present suit was filed after a lapse of 24 years whereas limitation is three years from the date of accrual of cause of action in case of suit for declaration.

Replication was not filed. From the pleadings of parties, issues were framed by the trial court. Parties led evidence in support of their respective cases.

After hearing learned counsel for the parties and appreciating the evidence on record, trial court vide judgment & decree dated August 08, 2016 dismissed the suit of plaintiff holding that his conviction had attained finality and a convicted person has no right to remain in service as well as suit is barred by limitation because limitation is

three years from the date of accrual of cause of action for suit for declaration.

Dis-satisfied plaintiff filed an appeal against the aforesaid decision of the trial court which was also dismissed by the lower appellate court vide judgment & decree dated May 15, 2017, affirming the findings returned by the trial court.

Now, through the instant Regular Second Appeal, plaintiff – appellant has challenged the judgment & decrees rendered by both the courts below.

Learned counsel for the appellant has vehemently contended that judgments rendered by the courts below suffer from irregularities and illegalities. Misreading of evidence has resulted into miscarriage of justice. The courts below have not taken into consideration the fact that there was violation of provisions of Articles 14 and 311 of the Constitution of India as well as violation of principles of natural justice since plaintiff – appellant was not afforded any opportunity of hearing before passing the dismissal order. The courts below have wrongly observed that his suit was time barred whereas in case of void order, there is no limitation.

This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the appellant but does not find any substance in the same.

Plaintiff joined as Chowkidar with defendant Nos.2 and 3 at Fatehabad on May 25, 1982. He was dismissed from service vide letter No.4617-21/6-E dated October 29, 1993 when he was working with SDO, Canal Lining, Sub-Division No.2A at Fatehabad, on the ground that he was convicted in a case. Plaintiff challenged the aforesaid impugned letter

department and he was not served any notice in view of Article 311 of the Constitution of India. Article 311 of the Constitution of India provides protection to public servants against punitive action being taken against them by an authority subordinate to one who appointed them. Exceptions to Article 311 have been provided in clauses (a), (b), (c) to clause (2) of Article 311, which provide that this Article shall not apply to such employees who have been punished for conviction in a criminal case where inquiry is not practicable to be held for reasons to be recorded in writing or where the President or the Governor, as the case may be, is satisfied that such an inquiry is not to be held in the interest of security of the State. Moreover, Article 310 is regarding doctrine of pleasure which has been recognized under our constitutional framework. All civil posts under the Government are held at its pleasure under which they are held and are terminable at its Will. Under the Indian constitutional framework, dismissal of civil servants must comply with the procedure laid down in Article 311, and Article 310(1) cannot be invoked independently with the object of justifying a contravention of Article 311 (2). As per exception provided to Article 311(2) with sub-clauses (a) to (c), no such inquiry is required to be conducted for the purposes of dismissal, removal or reduction in rank of persons when the same related to dismissal on the ground of conviction or where it is not practicable to hold an inquiry for the reasons to be recorded in writing by that authority empowered to dismiss or remove a person or reduce him in rank or it is not practicable to hold an inquiry for the security of the State.

In the case in hand, plaintiff – appellant Banwari Lal was held guilty and convicted alongwith one other person namely Mange Ram, under Section 408 IPC and sentenced to undergo RI for a period of two

were ordered to undergo RI for six months. Appeal preferred by them were also dismissed vide judgment dated July 05, 1993 (Ex.D1), however, sentence of RI was reduced to one year with fine of ₹ 2,000/-, and in default, to further under RI for three months. It is pertinent to mention here that even this Court, vide judgment dated September 02, 1993 reduced his sentence of RI of one year to RI of six months, however, fine was increased from ₹ 2,000/- to ₹ 5,000/-. In this view of the matter, conviction of plaintiff – appellant attained finality and therefore, he was rightly dismissed as a convicted person and has no right to remain in service.

A perusal of letter dated October 07, 1993 (Ex.D3) shows that Executive Engineer, Canal Lining Division No.1, Tohana sought legal advice of Legal Advisor in the matter of termination of services of plaintiff – appellant and Legal Advisor advised to take the proposed action. Consequently, he was dismissed from service w.e.f. July 05, 1993 vide office order dated October 29, 1993 (Ex.D4).

As regards limitation, plaintiff – appellant was convicted on January 31, 1991 and his appeal was dismissed on July 05, 1993. Consequently, he was dismissed from service w.e.f. July 05, 1993 vide letter dated October 29, 1993. The limitation for seeking a decree of declaration is three years from the date of accrual of cause of action, which arose on October 29, 1993 whereas the suit for declaration had been filed in August 2015 i.e. after an expiry of 22 years from the date of accrual of cause of action. Thus, suit of the plaintiff – appellant was rightly dismissed on the ground of limitation being time barred.

In the light of what has been discussed above, no question of law muchless substantial question of arises in this appeal. There is no

courts below, thus no interference by this Court is required and are upheld & affirmed.

Accordingly, the instant Regular Second Appeal is dismissed with no order as to costs.

September 21, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No