

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1481-1991 with
XOBS-14-C-1991
Date of Decision:-22.02.2018.

State of Punjab and others

.....Appellants

Versus

Lekh Raj

.....Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. R.B.S. Chahal, Additional A.G. Punjab.

Mr. Malkeet Singh Balianwali, Advocate for the respondent.

P.B. BAJANTHRI, J. (Oral)

In the instant appeal and cross-objection, State of Punjab-appellants have questioned the validity of the Appellate Court order whereas, respondent Lekh Raj has questioned the Appellate Court order insofar as challenge to orders dated 26.08.1982 and 28.1.1982.

(2.) Respondent-Lekh Raj while working with the appellants was subjected to 6 disciplinary proceedings. In all the 6 proceedings, he was punished by imposing various penalties like withholding of increments with cumulative effect and without cumulative effect. Feeling aggrieved by the penalty orders, respondent-Lekh Raj filed a suit challenging 6 orders dated 24.11.1981, 26.08.1982, 28.01.1982, 24.09.1982, 13.10.1982 and 05.03.1987. During pendency of the suit appellants are stated to have

withdrawn the penalty order dated 24.09.1982. Suit was decreed in part which reads as under:-

“In view of the above discussion, I dismiss the suit of the plaintiff if qua orders dated 24.9.82 as withdrawn. The suit of the plaintiff is decreed concerning orders dated 24.11.81 by holding that these orders are illegal and void. The suit of the plaintiff is dismissed with respect to orders dated 26.8.82, 28.1.82, 13.10.83, and 5.3.87. In view of the peculiarity of the circumstances of the case, there is no order as to costs. Decree sheet be drawn up accordingly and file be consigned.

*Announced
24.11.89*

*sd/- G.K. Dhir.,
Sub Judge Ist Class, Muktsar”*

Appeal was preferred before the Appellate Court. Appellate Court passed order on 4.2.1991. Extract of the order is reproduced hereunder:-

“For the reasons recorded above, I partly accept this appeal and set aside the judgment and decree of the trial court dismissing the suit of the plaintiff-appellant qua orders dated 28.1.1982 and 26.8.1982 and decreed the suit of the plaintiff appellant to the effect that these orders are illegal and void. However, I dismiss the appeal of the appellant qua orders dated 13.10.1983 and 5.3.1987. Parties are left to bear their own costs. Decree sheet be prepared and file be consigned.”

(3.) Learned counsel for the appellant submitted that suit was barred by limitation in respect of the orders of penalty which were challenged by the respondent-Lekh Raj, whereas, Trial Court entertained suit in respect of some orders and so also by the Appellate Court. Hence, the present appeal.

It was also submitted that both the Trial and Appellate Court exceeded their jurisdiction in entertaining the respondent's grievance which were highly belated challenge to penalty orders. It was also submitted that respondent-Lekh Raj without exhausting the remedy of appeal under the disciplinary and appeal rules, he has challenged the punishment orders. Therefore, both the Trial and Appellate Court have erred in extending benefits partially.

(4.) *Per contra*, learned counsel for the respondent submitted that punishment order dated 26.08.1982, 28.01.1982 and 24.11.1981 are void since appellants have issued show cause notice after obtaining explanation from the respondent and proceeded to impose the major penalty of withholding of increment with cumulative effect. Therefore, all these 3 orders are void. Insofar as orders dated 13.10.1982 and 5.3.1987, it was submitted that respondent has not been provided opportunity and so also they have not complied various provisions of the disciplinary and appeal rules. These issues have not been appreciated by the Appellate Court. Hence, they are liable to be set aside.

(5.) Heard learned counsel for the parties.

(6.) Crux of the matter in the present appeal is whether suit is barred by limitation in respect of the orders or not? Undisputedly all the orders of penalty which were subject matter of suit before the Trial Court were belated and were not within the limitation under the Limitation Act. Respondent has not availed the remedy of appeal before the Appellate Authority under the Punjab Civil Services (Punishment and Appeal) Rules, 1970. Learned counsel for the respondent's contention that void order can be set aside even if suit is barred by time, question of orders dated

if the orders have been passed without jurisdiction. Merely if the orders have been passed without holding inquiry that does not mean those orders are void. It is only a procedural irregularity. Even for such orders, limitation is attracted for the purpose of entertaining the suit. Therefore, Trial and Appellate Court have committed error in entertaining certain penalty orders and setting aside those penalty orders were not in accordance with law since all the 6 orders in challenging the suit are barred by limitation.

In view of these facts and circumstances, RSA-1481-1991 filed by the State of Punjab is allowed and XOBS-14-C-1991 is dismissed.

(P.B. BAJANTHRI)
JUDGE

February 22, 2018.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.