



**CM-16300-CWP-2018 in/and
CWP-2496-2017**

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

(266)

**CM-16300-CWP-2018 in/and
CWP-2496-2017
Date of Decision : January 07, 2025**

Bijender

.. Petitioner

Versus

Meham Co-operative Sugar Mills Ltd and another .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Manisha Singh, Advocate, for
Mr. Ranvir S. Chauhan, Advocate, for the petitioner.

Mr. S.K. Verma, Advocate, for respondent No.1.

Mr. Saurabh Girdhar, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

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Present application has been filed for recalling the order dated 24.09.2018, by which, the present writ petition was dismissed for want of prosecution.

Notice of the application has already been issued to the counsel opposite.

Learned counsel for the respondents raises no objection for the grant of prayer as raised in the present application.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the same is allowed. The order dated 24.09.2018 is recalled and the writ petition is restored to its original number and status.



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1. In the present writ petition, the challenge is to the order dated 25.01.2016 (Annexure P-1) by which, the claim raised by the petitioner against the order dated 06.03.2002 terminating the services of the petitioner, has been dismissed.

2. Learned counsel for the petitioner submits that only reason given by the respondents while terminating the services of the petitioner was that the petitioner had obtained the employment on the basis of fake documents whereas, in the FIR which was registered on the same allegation, the petitioner has been acquitted hence, the petitioner is entitled for reinstatement along with full back wages.

3. Learned counsel for the respondents submits that in the present case, an enquiry was conducted on the allegations alleged against the petitioner before terminating his services vide order dated 06.03.2002 but the petitioner never challenged the said order dated 06.03.2002 at any given point of time and even in the present petition, the said order is not under challenge hence, claiming reinstatement only on the ground that the petitioner has been acquitted of the allegation by the Criminal Court, will not entitle the petitioner to claim reinstatement and award of the trial Court dated 25.01.2016 is perfectly valid and legal.

4. I have heard learned counsel for the parties and have gone through the record with their able assistance.

5. First of all, the petitioner's services were terminated by the respondents vide order dated 06.03.2002. The said order has never been challenged by the petitioner. Even in the present petition, the said order is



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not under challenged. Once, the order terminating the services of the petitioner is not under challenge, the claim of the petitioner to grant of benefit of reinstatement merely on the ground that he has been acquitted by the Criminal Court, is not at all maintainable.

6. As per the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.1852 of 1989 titled as State of Punjab and others vs. Gurdev Singh and Ashok Kumar, decided on 21.08.1991***, even the void order is to be challenged within a period of three years from the date of passing of the said order whereas, the petitioner approached the Labour Court after 11 years and that too by raising a dispute. The relevant paragraphs of the said judgment are as under:-

“ 4. First of all, to say that the suit is not governed by the law of Limitation runs afoul of our [Limitation Act](#). The statute of limitation was intended to provide a time limit for all suits conceivable. [Section 3](#) of the Limitation Act provides that a suit, appeal or application instituted after the prescribed "period of limitation" must subject to the provisions of [Sections 4](#) to [24](#) be dismissed although limitation has not been set up as a defence, [Section-2\(J\)](#) defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suit, appeal or application. [Section 2\(J\)](#) also defines, "prescribed period" to mean the period of limitation computed in accordance with the provisions of the Act. The Court's function on the presentation of plaint is simply to examine whether, on the assumed facts the plaintiff is within time. The Court has to find out when the "right to sue" accrued to the plaintiff. If a suit is not covered by any of the specific articles prescribing a period of limitation, it must fail within the residuary article. The



*purpose of the residuary article is to provide for cases which could not be covered by any other provision in the [Limitation Act](#). The residuary article is applicable to every variety of suits not otherwise provided for. [Article 113](#) (corresponding to [Article 120](#) of the Act 1908) is a residuary article for cases not covered by any other provisions in the Act. It prescribes a period of three years when the right to sue accrues. Under [Article 120](#) it was six years which has been reduced to three years under [Article 113](#). According to the third column in [Article 113](#), time commences to run when the right to sue accrues. The words "right to sue" ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the 'cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted (See: (i) *Mt. Bole v. Mt. Koklam and Ors.*, AIR 1930 PC 270 and (ii) *Gannon Dunkerley and Co. v. The Union of India*, AIR 1970 SC 1433).*

8. It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for.

*11. The Allahabad High Court in [Jagdish Prasad Mathur and Ors. v. United Provinces Government](#), AIR 1956 All 114 has taken the view that a suit for declaration by a dismissed employee on the ground that his dismissal is void, is governed by [Article 120](#) of the [Limitation Act](#). A similar view has been taken by Oudh Chief Court in *Abdul Vakil v. Secretary of State and Anr.*, AIR 1943 Oudh 368. That in our*



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opinion is the correct view to be taken. A suit for declaration that an order of dismissal or termination from service passed against the plaintiff is wrongful, illegal or ultra vires is governed by [Article 113](#) of the [Limitation Act](#). The decision to the contrary taken by the Punjab & Haryana High Court in these and other cases ((i)[State of Punjab v. Ajit Singh](#), [1988] 1 SLR 96 and (ii) [State of Punjab v. Ram Singh](#), [1986] 2 SLR 379 is not correct and stands overruled.”

7. Under these circumstances, keeping in view the said fact, the decision of the Labour Court not to exercise jurisdiction under Section 2-A of the Industrial Disputes Act after a period of 10 years of the passing of the order needs no interference at the hands of this Court. Even otherwise, merely that the employee has been acquitted of the criminal allegation does not mean that the proceedings initiated departmentally, wherein, an action has been taken, will render void *ipso facto*.

8. Keeping in view the above, no ground is made out for any interference by this Court in the facts and circumstances of the present case.

9. Dismissed.

10. Civil miscellaneous application pending if any, also stands disposed of.

January 07, 2025
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No