

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

-.-

RSA 850 of 1992 (O&M)

Date of decision: 05.09.2019

The State of Punjab

.....*Appellant*

Versus

Dina Nath

.....*Respondent*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. A A Pathak, Additional A.G., Punjab
for the appellant

Mr. S C Chhabra, Advocate
for the respondent

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Rekha Mittal, J. (Oral)

Challenge in the present appeal has been directed against the judgments and decrees passed by the Courts whereby suit for declaration to challenge order dated 15.01.1982 qua removal from service filed by the respondent/plaintiff was partly decreed by the trial Court with the following observations:-

The suit of the plaintiff succeeds and the same is hereby decreed in his favour and against the defendant with costs. It may, however, be mentioned here that since the plaintiff came to know about the impugned order passed against him in 1982, sooner thereafter it was his duty to have challenged the said order as early as possible and he was not entitled to sit tight at home and then

thought of filing the present suit in 1988 i.e. five years and nine months after the passing of the impugned order. The plaintiff, therefore, shall not be entitled to claim any arrears of pay with effect from 15.01.1982 to 09.05.1988. He shall be entitled to claim arrears of pay prior to 15.01.1982 and thereafter from 10.05.1988 till he rejoins his duty."

The appeal preferred by the respondent/plaintiff to assail the judgment passed by the trial Court, denying arrears of pay from 15.01.1982 to 09.05.1988 was accepted by the District Judge, Ferozepur and judgment and decree passed by the trial Court was modified accordingly with findings that the appellant shall also be entitled to arrears of pay and allowances from 15.01.1982 to 09.05.1988.

Counsel for the appellant would argue that to challenge the order of removal from service dated 15.01.1982, the suit was filed in May 1988, therefore, the same is clearly barred by limitation, as such, the judgments and decrees passed by the Courts are liable to set aside on this score alone. Another submission made by counsel is that since the respondent challenged the order of removal from service passed on 15.01.1982 by filing a suit in May 1988, the trial Court rightly denied him arrears of pay etc. during intervening period but the appellate Court has wrongly modified judgment and decree passed by the trial Court.

Counsel representing the respondent/plaintiff, on the other hand, would urge that since the appellant neither filed any appeal before the first appellate Court nor cross objections in the appeal preferred by the respondent against the judgment and decree dated 01.06.1989 passed by the trial Court and, as such, findings of the trial Court on question of limitation

had attained finality, therefore, it is not open for the appellant to raise question of limitation for the first time in second appeal. It is further argued that since order of removal from service has been held to be void, the Court in appeal has rightly allowed claim of the respondent with regard to arrears of pay etc. for the period from 15.01.1982 to 09.05.1988 as well.

I have heard counsel for the parties, perused the paper book and records.

Be that as it may, indisputably, order of removal from service passed on 15.01.1982 was challenged by the plaintiff in May 1988. Perusal of averments raised in the plaint makes it evident that in para 5 thereof, it has been mentioned that cause of action accrued to the plaintiff on 15.01.1982 when the impugned order was passed by General Manager, Punjab Roadways, Ferozepur. The trial Court framed issue No. 3, reads, thus:-

'Whether the suit is within time? OPP'

The aforesaid issue was determined by the trial Court in para 10 of the judgment and the same was answered in favour of the respondent/plaintiff and against the defendant/appellant. Counsel for the appellant has not disputed that the State of Punjab neither filed any appeal before the first appellate Court nor filed cross objections to assail findings of the trial Court on issue No. 3. That being so, findings of the trial Court on issue No. 3 got affirmed in the first appeal. Since the appellant did not challenge findings of the trial Court on issue No. 3 before the first appellate Court, the appellant cannot challenge those findings for the first time in the second appeal. In this view of the matter, I find merit in contention of the

respondent/plaintiff that fate of determination of issue No. 3 by the trial Court got sealed and is not amenable to challenge in second appeal.

This brings the Court to question of payment of arrears of pay for the period from 15.01.1982 to 09.05.1988. Since the appellant got cause of action to challenge order dated 15.01.1982 immediately at the passing of the order, he was required to file the suit within a period of three years. There is no explanation by the respondent for his approaching the Court after a period of six years. In the given circumstances, when the case is examined from the point of view of equity, the respondent/plaintiff should not be allowed to take advantage of his own wrong by seeking arrears of pay with effect from 14.01.1985 till 09.05.1988 as he was otherwise required to file the suit within three years. Accordingly, the respondent would not be entitle to arrears of pay for the period from 14.01.1985 till 09.05.1988. The judgment and decree passed by the Court in appeal is modified accordingly.

In view of what has been discussed herein-before, the appeal is partly allowed in the aforesaid terms, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

05.09.2019
Mohan Bimbura

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