

2023:PHHC:127140
**109 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-1253-1992 (O&M)
Date of decision: 29.09.2023

Punjab State and another

....Appellants

Versus

Bihari Lal

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Vikas Arora, AAG, Punjab

Mr. R.L.Gupta, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1. The correctness of the concurrent findings of fact arrived at by the courts below is challenged by the defendant (State of Punjab) in this Regular Second Appeal. Learned counsel representing the appellant submits that though the issue of limitation was never taken up before the courts below, however, apparently the suit filed by the plaintiff was beyond the period prescribed in the Schedule attached to the Limitation Act, 1963. He submits that the services of the respondent were terminated vide order dated 12.01.1984 whereas the suit was filed on 03.06.1988.

2. Learned counsel representing the respondent has examined the plaint filed by the plaintiff. He admits that there is no dispute with regard to the receipt of order dated 12.01.1984 terminating the services.

3. As per Article 58 of the Schedule attached to the Limitation Act, 1963, the limitation for filing the suit for declaration is 3 years from the date when the right to sue first accrues. Moreover, even if the order of termination is void, still the same is required to be challenged by filing a suit within a period of 3 years. Even if 2 months time for service of notice under Section 80 C.P.C is excluded, still the suit is filed after a period of 4 years and 4 months approximately from the date of termination. In view of the judgment passed by the Supreme Court in the **State of Punjab vs. Gurdev Singh (1991) 4 SCC 1** in case of termination of service, the limitation begins to run from the date such order is passed.

4. The objection with regard to the limitation can be permitted to be raised at any stage of proceedings, particularly when it is not based on evidence.

5. Keeping in view the aforesaid facts, the suit filed by the plaintiff was beyond the period of limitation. Hence, the judgments passed by both the courts below are set aside and the Regular Second Appeal is allowed. Consequently, the suit filed by the plaintiff shall stand dismissed.

6. All the pending miscellaneous applications, if any, are also disposed of.

29.09.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE