

RSA No.239 of 1992 (O&M)
Date of Order: 07.12.2023

State of Punjab and another

Versus

Gian Singh

.Appellants

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gurpreet Singh, Addl. A.G., Punjab

 Mr. Suresh Kumar Boudh, Advocate, for
 Mr. R.L.Sharma, Advocate
 for the respondent.

ANIL KSHETARPAL, J

1. This regular second appeal has been filed by the State of Punjab to assail the correctness of the judgment and decree passed by the First Appellate Court which in turn has reversed the judgment and decree passed by the trial court.
2. It has been reported by the learned State counsel that all the increments were released to the respondent except two increments which were stopped pursuant to the punishment order dated 22.07.1981. The respondent has now died.
3. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.
4. Late Sh. Gian Singh, the respondent, filed a civil suit on 14.08.1987, seeking grant of decree of declaration that the following orders of punishment are illegal, null and void:-

Sr.No.	Order dated	Punishment
1.	09.12.1976	One increment stopped

2.	11.05.1977	One increment stopped
3.	29.09.1977	One increment stopped
4.	29.03.1977	One increment stopped
5.	29.08.1978	One increment stopped
6.	16.01.1979	One increment stopped
7.	25.08.1981	One increment stopped
8.	22.07.1981	Two increments stopped
9.	25.03.1982	One increment stopped

5. It was asserted that these orders have been passed without following the principles of natural justice.

6. The suit was contested by the defendants-State of Punjab (appellants herein).

7. The trial court partly decreed the suit and the order of penalty dated August, 1981, was declared illegal and void. However, with respect to other punishment orders, the suit was declared to have been filed after the period of limitation and therefore dismissed.

8. Late Sh. Gian Singh filed the first appeal. The First Appellate Court reversed the judgment and decree passed by the trial court and held that all orders of penalty except order dated 22.07.1981, are illegal, null and void. However, the First Appellate Court has not discussed the issue of limitation.

9. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book

10. The learned counsel representing the appellants (State of Punjab) contends that all the penalty orders were passed between 09.12.1976 to 25.03.1982, whereas the suit was filed on 14.08.1987. He submits that there is no such finding given by any of the courts below that the copy of

penalty orders was not served on late Sh. Gian Singh. He relies upon the judgment passed in **State of Punjab vs. Balkaran Singh 2006(12) SCC 709** to contend that while passing the judgments the courts have erred in decreeing the suit.

11. On the other hand, the learned counsel representing the respondent contends that through various orders passed by the disciplinary authority the one or two increments of the respondent were stopped with cumulative effect. He submits that except the order dated 25.08.1981, the disciplinary inquiry was not held although the major penalty was awarded.

12. This court has considered the submissions of the learned counsel representing the parties.

13. The concept of void order in the context of service law has been explained in ***State of Punjab and Others v. Gurdev Singh (1991) 4 SCC 1***. It has been held that the order of dismissal is required to be challenged by filing a suit within the period of three years from the date the cause of action has accrued. In **Balkaran Singh's case (supra)**, the entitlement to the revised pay scale was the subject matter of the suit which was filed after a period of more than 12 years from the date the revised pay scale was released. While discussing Article 58 of the Schedule attached to the Limitation Act, the court held that the suit is required to be filed within three years from the date the cause of action accrued.

14. In this case, evidently the suit was filed beyond the period of three years from the last order passed on 25.03.1982. The attention of the court has not been drawn to the reliable evidence to prove that the aforesaid orders penalizing the respondent with major penalty were not served on him.

15. However, as already noticed, the current position is that all the

benefits were released to the respondent except increments under order dated 22.07.1981.

16. Keeping in view the aforesaid facts, it would not be appropriate to order recovery from the heirs particularly when not only late Sh. Gian Singh but even his widow has died. The appeal is disposed of while directing that the department shall not be liable to pay any further amount.

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

December 07, 2023

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(ANIL KSHETARPAL)

JUDGE

Whether speaking/reasoned

Whether reportable

:YES/NO

:YES/NO