In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 2542 of 1992

Mehnga Singh

... Petitioner(s)

Versus

The State of Punjab and Another

... Respondent(s)

AND

2. Civil Revision No. 4669 of 1994

Amar Nath

... Petitioner(s)

Versus

The General Manager, Punjab Roadways, Depot Ropar.

... Respondent(s)

RESERVED ON: 13.10.2023
PRONOUNCED ON: 17.10.2023

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. G.S.Nagra and Mr. K.S.Rawat, Advocates
for the appellant (In RSA-2542-1992) and
for the petitioner (In CR-4669-1994).

Mr. Vikas Arora, Assistant Advocate General,
Punjab, for the respondent(s).

Anil Kshetarpal, J.

1. The two connected cases, namely Regular Second Appeal No. 2542 of 1992 and Civil Revision No. 4669 of 1994 have come up for final disposal. The common issue thar arises for consideration is, "whether it is necessary to challenge the various orders of punishments while stopping the increments of the employee in the Court of law within the prescribed period of limitation of three years from the date the cause of action arises?"

2. In the Regular Second Appeal No. 2542 of 1992, both the

Courts below have concurrently found that the plaintiff filed a suit on 16.03.1991 challenging the orders passed by the competent authority running from 30.06.1971 to 28.03.1983. Both the Courts below have held that the plaintiff has filed a suit beyond the period of limitation.

3. In Civil Revision No. 4669 of 1994, the petitioner has filed an application under Section 15(2) of the Payment of Wages Act, 1936 (hereinafter referred to as "the Wages Act") for refund of the delayed/debited wages. In substance, it was found that as many as eight orders have been passed by the punishing authority whereby 17 increments of the plaintiff were stopped. He filed an application before the authority on 05.10.1988. It was found by the competent authority under the Wages Act that except the order dated 14.04.1978 and 11.08.1981, the petitioner's application was barred by the limitation period.

4. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-books along with the requisitioned record.

5. The learned counsel representing the appellant in the regular second appeal submits that the orders are non est in the eyes of law, therefore, there is no limitation for filing the suit. The learned counsel submits that both the Courts below have erred in dismissing the suit.

6. On the other hand, the learned State counsel has submitted that as many as 16 increments of the appellant were stopped vide various orders passed by the punishing authority. The learned State counsel submits that the appellant was communicated with respect to all the orders and he has admitted that whenever he received the order, he replied. In such

circumstances, the appeal is liable to be dismissed.

7. In the ***State of Punjab and Others v. Gurdev Singh (1991)4 SCC 1***, the Supreme Court examined the issue of limitation in the context of the order of dismissal passed against the employee. The relevant discussion is in para 6 which is extracted as under:-

> *"6. 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 limita- tion 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 insti- tuted (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. Thereafter, in the context of order stopping increments as a matter of penalty was again examined by the Supreme Court in ***State of Punjab and Others v. Rajinder Singh, Conductor (1999) SCC (L&S) 664***. In this case also, the Supreme Court held that the suit for declaration is required to be filed within a period of three years from the date the order is communicated. Similarly, in the ***State of Punjab and Another v. Balkaran Singh (2006) 12 SCC 709***, the Court held that the employee was denied the higher pay scale. Hence, he was required to file the suit within the

prescribed period of three years. The fact that another officer has obtained a decree in his/her favour does not furnish a fresh cause of action to the plaintiff to file a suit.

9. Keeping in view the aforesaid well settled law, there is no occasion to form a different view. Section 22 of the Limitation Act, 1963 (hereinafter referred to as "the 1963 Act"), is applicable only to the cases where there is a continuing breach of contract and in case of a continuous tort, and the period of limitation starts afresh with each tort or breach. Section 22 of the 1963 Act is not applicable if the orders have been passed by the authorities as a measure of punishment or otherwise. Article 58 of the Schedule to the 1963 Act uses the expression "first accrue". Thus, the period of limitation begins to run from the date the cause of action first accrues. Under Article 113 of the 1963 Act, which is in the form of a residuary Article, the period of limitation to file a suit is three years from the date the right to sue accrues.

10. Keeping in view the aforesaid facts and discussion, there is no merit in both the cases. Hence, both the Regular Second Appeal No. 2542 of 1992 as well as Civil Revision No. 4669 of 1994 are dismissed.

(Anil Kshetarpal)
Judge

October 17, 2023
"DK"

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