

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

RSA No.353 of 1992 (O&M)

Date of Order:31.10.2023

State of Punjab

.Appellant

Versus

Nishan Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Arora, AAG, Punjab

Mr. Rajinder Sharma, Advocate

Mr. Mridul Sharma, Advocate

Mr. Vivek Swami, Advocate

for the respondent.

ANIL KSHETARPAL, J

1. This appeal has been filed by the State of Punjab (defendant in the suit) to assail the correctness of the judgment and decree passed by the first appellate court while reversing that of the trial court.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed:-

3. The respondent was working as a conductor in the Punjab Roadways. He filed a suit on 13.01.1987, for grant of decree of declaration to the effect that the orders dated 01.02.1972, 24.10.1973, 11.01.1974, 16.01.1976, 22.12.1978, 01.02.1979 and 29.07.1980, vide which one, two, three, two, one, one and six annual increments of the plaintiff with cumulative effect have been stopped, are illegal, ultravires, wrong and without jurisdiction. These orders were passed by the disciplinary authority

after serving show cause notice to the plaintiff.

4. The learned trial court dismissed the suit on the ground of that it has been filed beyond the period of limitation as well as on merits. However, the First Appellate Court has reversed the judgment and decree passed by the trial court while relying upon the judgment passed in **State of Punjab vs. Ajit Singh, 1988 (1) S.L.R., 96**. It has been held that the orders were passed in violation of the mandatory provisions of law and therefore there is no limitation to challenge such orders.

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

6. The learned State counsel while relying upon the judgments in **State of Punjab and Others v. Gurdev Singh (1991)4 SCC 1**, **State of Punjab and Others v. Rajinder Singh, Conductor (1999) SCC (L&S) 664** and **State of Punjab and Another v. Balkaran Singh (2006) 12 SCC 709** submits that the orders are required to be challenged by filing a suit within a period of three years failing which the suit was correctly dismissed by the trial court. He submits that it has been positively asserted by the State that the effect of the order was communicated to the respondent forthwith.

7. On the other hand, the learned counsel representing the respondent submits that the copy of the orders were not supplied and therefore, it results in recurring cause of action.

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

9. In fact, the Supreme Court in **State of Punjab and Others v. Gurdev Singh(supra)** held that even a void order is required to be challenged within a period of limitation. 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 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)."

10. Thereafter, in the context of order stopping increments as a matter of penalty was once 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, it was held that the suit for declaration is required to be filed within a period of 3 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 who has been denied higher pay scale is required to file a suit within the prescribed period of three years.

11. It may be noted here that the concept of recurring cause of action stems out from Section 22 of the Limitation Act, 1963. On a careful reading of Section 22, it is evident that its applicability is being restricted to the cases where there is a continuing breach of contract and in case of a continuous tort. The period of limitation starts afresh with each tort or breach. Thus, it will not be appropriate to invoke the concept of continuous cause of action with respect to the suits filed to challenge the orders passed by the competent authority as a measure of punishment.

12. Keeping in view the aforesaid discussion, the judgment and decree passed by the First Appellate Court is not sustainable, hence the same is set aside and that of the trial court is restored.

13. The appeal is allowed.

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

October 31, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO