

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

103

RSA-1151-1995

Date of decision: 21.12.2023

GIRDHARI LAL

..Appellant

Versus

STATE OF PUNJAB & ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. K.K. Kahlon, Advocate
for the appellant.

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

ANIL KSHETARPAL, J(Oral)

1. In this regular second appeal, the plaintiff assails the correctness of the judgment and decree passed by the First Appellate Court. In a disciplinary proceeding after the charge sheet was served and a reply was filed, the inquiry officer was appointed. On receipt of the inquiry report, a show cause notice was issued and ultimately the disciplinary authority ordered stoppage of one increment with cumulative effect vide order dated 12.04.1984. The appellant filed the suit on 18.08.1990, to challenge the correctness of order dated 12.04.1984. The trial Court held that the order passed by the disciplinary authority is void ab initio and therefore, there is no limitation for filing of such suit, however, the First Appellate Court while relying upon the judgment passed by the Supreme Court in **State of Punjab and Others v. Gurdev Singh (1991)4 SCC 1**, held that the period of limitation for filing such suit is three years under Article 113 of the schedule attached to the Limitation Act, 1963.

2. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

3. The learned counsel representing the appellant submits that the inquiry officer reported that the charges against the appellant were not established, however, the disciplinary authority wrongly differed with the contents of the report. She submits that in view of the aforesaid, the impugned order is void ab initio.

4. This Court has considered the submissions of the learned counsel representing the parties.

5. The period of limitation for filing suits to challenge the correctness of orders passed by the disciplinary authority punishing employees has been grabbing the attention of the Courts for a sufficiently long time. In fact, in **State of Punjab and Others v. Gurdev Singh (1991)4 SCC 1**, the Supreme Court held that such orders are not void ab initio, though, they may be illegal, erroneous or against the law. Thus, the Court held that the limitation for filing such suits is three years from the date the order comes to the knowledge of the employee.

6. Similarly, this issue has been examined in detail in **RSA-2542-1992, titled as "Mehnga Singh Vs. The State of Punjab and another, decided on 17.10.2023.**

7. The relevant discussion in the aforesaid judgment is extracted as under:-

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 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)."

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.”*

- 8. In view of the aforesaid facts and discussion, no ground to interfere is made out.
- 9. Dismissed accordingly.
- 10. All the pending miscellaneous applications, if any, are also disposed of.

December 21st, 2023

(ANIL KSHETARPAL)
JUDGE

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