

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

107

RSA-2165-1995

Date of decision: 14.12.2023

**STATE TRANSPORT COMMISSIONER,
GOVERNMENT OF HARYANA AND ORS**

..Appellants**Versus****GOBIND SINGH****..Respondent****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Ms. Vibha Tewari, AAG, Haryana
& Mr. J.S. Pannu, AAG, Haryana.

Mr. A.S. Pannu, Advocate
for Mr. Vikas Singh, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1. The State Transport Commissioner along with others have assailed the correctness of the concurrent findings of fact arrived at by the Courts below while partly decreeing the plaintiff's suit for grant of decree of declaration that various orders were passed by the disciplinary authority stopping his annual increments with cumulative effect are illegal, null and void. It may be noted here that by the following orders, the annual increments of the plaintiff (respondent herein) were stopped with cumulative effect:-

- i. 21.07.1970;
- ii. 11.03.1975;
- iii. 20.07.1979; and,
- iv. 22.07.1979.

2. The suit was filed on 21.02.1987. The defendants while contesting the suit claimed that the suit has not been filed within the

prescribed period of limitation. It was also asserted that plaintiff's annual increments were stopped as he was found guilty of fraud and misusing the government funds.

3. The trial Court upheld the orders passed on 21.07.1970 and 11.03.1975, however, set aside the orders dated 20.07.1979 and 22.07.1979, on the ground that order stopping annual increments with cumulative effect falls in the category of major penalty, which can only be effected after a departmental inquiry. The Court found that no departmental inquiry has been held to inflict upon the plaintiff a major penalty. The First Appellate Court has confirmed the judgment of the trial Court.

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

5. The learned counsel representing the appellants contends that at the relevant time, the services of respondent were governed by the Punjab Civil Services (Punishment and Appeals) Rules, 1970, and withholding of increments of pay with cumulative effect was falling under the category of minor penalty and it was only on 19.11.1992, the punishment of withholding of increments of pay with cumulative effect was incorporated under heading 'Major Penalty'. She further submits that the plaintiff's suit was filed beyond the prescribed time as the period of limitation for filing the suit was within three years from the date when cause of action accrues.

6. On the other hand, the learned counsel representing the respondent prays for upholding the judgment and decree passed by the Courts below.

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

8. It is evident that the First Appellate Court has overlooked that at the relevant time i.e. in the year 1979, punishment of stoppage of annual increments of pay with cumulative effect was a minor penalty as per Punjab Civil Services (Punishment and Appeal) Rules, 1970. The manner has been explained by the Supreme Court in **Kulwant Singh Gill Vs. State of Punjab and others, 1991 (Suppl.) SCC 504**. The State of Haryana enacted its own rules in the year 1987. In this case, the impugned orders were passed when Punjab Civil Services (Punishment and Appeal) Rules, 1970, were applicable.

9. Moreover, it is evident that both the Courts have not found that the respondent was not in the knowledge of the orders passed on 20.07.1979 and 22.07.1979. Thus, the period of limitation begin to run from the date, the orders were served on the respondent. The maximum period of limitation for filing a suit for declaration is three years from the date, the cause of action accrues.

10. 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**.

11. 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.”*

11. The learned counsel representing the respondent failed to make any other submission.
12. Hence, the appeal is allowed. The judgment and decree passed by the Courts below are set aside.
13. All the pending miscellaneous applications, if any, are also disposed of.

December 14th, 2023
Ay

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :

Whether reportable :

Yes/No

Yes/No