

2023:PHHC:152194

109 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-795-1996 (O&M)

Date of decision: 30.11.2023

Pepsu Roadways Transport Corporation

....Appellant

Versus

Hardev Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Raman Mahajan, Advocate for the appellant

Mr. Anurag Chopra, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1. Yesterday, after hearing the learned counsel representing the parties, the following order was passed by this Court:-

“Learned counsel representing the parties have been heard at a substantive length.

*Learned counsel representing the appellant contends that the respondent was penalized by three different orders passed on 26.06.1984, 15.11.1984 and 21.04.1987 whereas the respondent (plaintiff) filed a suit for grant of decree of declaration only on 03.12.1993. He submits that the period of limitation of 3 years would begin to run from the date the order of penalty was passed. He relies upon **State of Punjab and others vs. Gurdev Singh (1991) 4 SCC 1, State of Punjab and others vs. Rajinder Singh, Conductor (1999) SCC (L&S) 664 and State of Punjab and another vs. Balkaran Singh (2006) 12 SCC 709.***

On the other hand, the learned counsel representing the respondent submits that the orders were passed without issuing any show cause notice or inquiry and therefore, the period of limitation will not

*begin to run as it arises from a continuous cause of action. He relies upon the judgment passed in **State of Madhya Pradesh and others vs. Yogendra Shrivastava (2010) 12 SCC 538.***

*Prima facie the judgment passed in **Yogendra Shrivastava's case (supra)** will not be applicable as in that case the dispute was with regard to the payment of non practising allowance. In that context, the Supreme Court held that whenever an employee is not paid in accordance with rules, a fresh cause of action accrues in favour of the employee.*

At this stage, the learned counsel representing the respondent prays for a short accommodation to deeply examine the legal position.

List on 30.11.2023, in the urgent list.

No further request for an adjournment shall be entertained.”

2. Learned counsel representing the respondent has once again being heard. He relies upon the judgment passed by the Supreme Court in ‘**Union of India and others vs. Tarsem Singh**’ Civil Appeal No.5151-5152-2008 decided on 13.08.2008 and **M.R.Gupta vs. Union of India and others (1995) 5 SCC 628.**

3. This Court has carefully read both the judgments. In **Tarsem Singh's case (supra)** a writ petition was filed in the High Court for direction to the Union of India to pay the amount of disability pension to the petitioner. In that context, the Supreme Court invoked Section 22 of the Limitation Act, 1963 (hereinafter referred to as ‘1963 Act’) and held that it was a case of continuing wrong. In **M.R.Gupta's case (supra)** suit was filed for the proper fixation of pay. In those circumstances, the Court held that this case also falls in the category of continuing wrong.

4. As already noticed, the facts of this appeal are different. PEPSU Road Transport Corporation had passed orders penalising the respondent in 1984 as well as in 1987. The suit was filed in December, 1993.

5. Section 22 of the 1963 Act provides that a fresh period of limitation will begin to run at every moment of time during which breach or the tort, as the case may be, continues. Thus, Section 22 of the 1963 Act has no application in the facts of the present case.

6. Both the courts have held that there is no limitation period for filing the kind of suit involved in the present case. The concept of void ab initio order and requirement to file the suit within a period of 3 years has been explained by the Supreme Court in **Gurdev Singh's case (supra)**. In **Rajinder Singh's case (supra)** once again the Supreme Court 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 **Balkaran Singh's case (supra)**, the Court held that the employee, who has been denied a higher pay scale, is required to file a suit within a period of three years.

7. Keeping in view the aforesaid well settled law, there is no occasion to take a wholly different view. Consequently, the judgments passed by both the courts below are set aside and the suit

filed by the plaintiff is dismissed as it was filed beyond the prescribed period of limitation under the 1963 Act.

8. The appeal stands allowed.

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

30.11.2023

(ANIL KSHETARPAL)
JUDGE

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No