

**RSA-2872-1999 (O&M) AND
RSA-3013-1999 (O&M)**

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

Date of decision: January 18, 2023

1. RSA-2872-1999 (O&M)

Punjab State Cooperative Supplies and Marketing
Federation Ltd.

....Appellant

versus

Harish Chander Sehgal and another

....Respondents

2. RSA-3013-1999 (O&M)

Harish Chander Sehgal

....Appellant

versus

Punjab State Co-operative Supplies and Marketing
Federation Ltd. and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Karminder Singh, Advocate for the appellant
in RSA-2872-1999 and for respondents
in RSA-3013-1999.

None for the appellant in RSA-3013-1999 and
for respondent No.1 in RSA-2872-1999.

ARUN MONGA, J. (ORAL)

CM-5137-C-1999 IN RSA-3013-1999

For the reasons stated in the application, the same is allowed. Delay
of 8 days in re-filing the appeal is condoned.

Main cases (O&M)

Vide this common order and judgment, above-mentioned two
second appeals are being disposed of, since the controversy and facts raised
therein are common. For brevity, recitals are taken from RSA-3013-1999.

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For convenience, parties herein are addressed as per the recitals before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, appellant-plaintiff is in second appeal before this Court assailing the trial Court judgment and decree dated 31.03.1993, as upheld by learned First Appellate Court vide its judgment and decree dated 12.02.1999.

3. Briefly stated, facts, as noticed by Courts below, are that plaintiff-appellant had joined the service with respondent No.1-MARKFED as Food Supply Inspector (F) we.f. 07.04.1969. He discharged his duties to the satisfaction of his superiors. MARKFED authorities got registered a case against him under Section 408 of the Indian Penal Code. Plaintiff was acquitted by learned Judicial Magistrate First Class, Ludhiana, on 06.08.1986. Plaintiff was relieved from his duties as Field Inspector, Mullanpur and was served with a show-cause notice. No regular order of the office of Managing Director was served upon the plaintiff. He raised preliminary objections about enquiry proceedings that one Kulwant Singh Salesman had levelled the charge against plaintiff that an amount of Rs.9,700/- was paid by the plaintiff to the Salesman for deposit of Rs.11,000/-with the Society. Plaintiff requested to summon said Kulwant Singh as a witness to prove the fact of actual amount, but to no avail. Plaintiff-appellant was not even afforded opportunity of hearing and he was dismissed from service vide order dated 15.11.1980. Aggrieved, plaintiff-appellant preferred an appeal before the Board of Directors and also revision in which he failed. Hence, petitioner filed the civil suit before learned trial Court.

4. Upon notice, defendants appeared and raised preliminary objections to the effect that suit was time barred, civil Court having no jurisdiction in view

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of Section 82 of Punjab Cooperative Societies Act, 1961; suit was liable to be dismissed for want of notice under Section 79 of said Act, plaintiff has no cause of action to file the suit. On merits, all the grounds set up by the plaintiff to challenge his dismissal order, order of appeal as well as order of revision were denied.

5. In replication, plaintiff controverted the allegations and re-affirmed those of the plaint.

6. Based on the rival pleadings, following issues were framed:

- “1. *Whether plaintiff is entitled to the declaration as prayed for? OPP.*
2. *Whether suit is time barred? OPD.*
3. *Whether suit is bad for non-issuance of notice U/S 79 of Punjab Co-operative Societies Act? OPD.*
4. *Whether this court has no jurisdiction? OPD.*
5. *Whether plaintiff has no cause of action? OPD.*
6. *Whether suit is not maintainable? OPD.*
7. *Whether suit is not properly valued for the purpose of Court fee? OPD.*
8. *Relief.”*

7. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

8. On appraisal of evidence vis-à-vis pleadings, trial Court decided issues No.1 to 4, 6 and 7 against the plaintiff while issue No.5 was decided in favour of the plaintiff. Consequently, learned trial Court dismissed the suit of the plaintiff-appellant vide impugned judgment and decree dated 31.03.1993.

9. Feeling aggrieved against the said judgment and decree dated 31.03.1993, appellant-plaintiff preferred first appeal.

10. Learned First Appellate Court dismissed the appeal, resulting in two Regular Second Appeals before this Court; one by plaintiff Harish Chander

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Sehgal and second by defendant No.1-Punjab State Cooperative Supplies and Marketing Federation Limited.

11. In RSA-2872-1999, though the learned first Appellate Court dismissed the appeal, yet defendant No.1 is aggrieved against findings of learned First Appellate Court on issue No.1 that non-supply of copy of inquiry report was fatal to the case of Punishing Authority.

12. Learned counsel for appellant/defendant No.1 in RSA-2872-1999 argues that decision of learned First Appellate Court on issue No.1 is against law and facts and is liable to be set aside.

13. In its judgment, the learned First Appellate Court, *inter alia*, observed, as under:

“13. I have considered the submissions made by the learned counsel for the appellant. I am unable to agree with the same. It has repeatedly been held by the Apex court and various High courts that in service matters limitation is three years and starts from the date of order. It was so held in an authority reported as State of Punjab versus Gurdev Singh Ashok Kumar AIR 1991SC. 2219. Question of limitation was also considered by larger Bench of seven judges of the Hon’ble Supreme Court of India in another authority reported as S.S. Rathore versus State of Madhya Pradesh AIR 1990 S.C. 10. In that case also it was reiterated that the limitation to challenge the dismissal order is three years and it starts from the date of dismissal order. In that case it was further held that reported representations which are not provided by the statute do not give an extended period of limitation to the plaintiff. In view of the law laid down in these authorities particularly, in S.S. Rathore’s case (Supra), the suit of the plaintiff cannot be held to be within limitation due to the reason that his mercy petition was dismissed by the department on 17.3.89, Hence, no ground is made out to interfere with the findings recorded by the learned trial court on issue No.2 and these are affirmed accordingly.

14. In respect of issue No.1 it is argued by the learned counsel for the appellant that DW-1 Kailash Nath Awasthi produced by the respondents has admitted in his cross-examination at several places that copy of Inquiry report was not supplied to the appellant along with the show cause notice. It is argued by the learned counsel for the appellant that non-supply of copy of inquiry report is fatal to the case of the punishing authority. On the

other hand, it is argued by the learned Govt. Pleader that supply of copy of inquiry report was made mandatory by the Apex Court from the date of decision of Ramjan Khan's case 1991 (1) SLR 159; that case was decided on 20.11.90. In the present case, dismissal order was passed on 15.11.80, therefore, non- supply of copy of inquiry report is not fatal in the instant case.

15. *I have considered the submissions raised by the learned counsel for the respondents and am unable to agree with the same. In this respect it may be noted that in Ramjan Khan's case it was held that if the departmental rules require the supply of copy of inquiry report; that remained mandatory throughout, It was further held that where it is not the requirement of the rules, still, the supply of copy of inquiry report is mandatory, but, it was made mandatory from the date of decision of Ramjan Khan's case which was decided on 20.11.90. In the instant case, it is argued by the learned counsel for the appellant and is not disputed from the opposite side that Rules of the department require that it was essential to supply copy of inquiry report alongwith the show cause notice. Hence, I am of the view that the findings recorded by the trial court on issue No.1 are liable to be reversed and set aside subject to the decision of issue No.2 discussed above,*

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I have considered the submissions made by the learned counsel for the appellant and am of the view that had there been any possibility to cure the defect in the case of the appellant simply by producing and proving the notice under section 79 of the Punjab Co.-Op. Societies Act, I would have allowed the request, as already stated above, the suit of the appellant is hopelessly time barred, Even otherwise, this is a dispute between an employee and a co-op. Society and as per the law laid down by the Hon'ble High Court of Punjab and Haryana, Chandigarh in an authority reported as Ran Singh vs. The Gandadhar Agriculture co.-op. Societies 1975 P.L.R.201 suit is barred under section 82 of the Punjab co.-op. Societies Act, 1961. Therefore, no useful purpose shall be served by allowing the appellant to produce and prove the notice under section 79 of the Punjab co. operative Societies Act. Hence, the findings of the learned trial court on issues No.3 and 4 are also maintained and are accordingly affirmed.

17. *Findings of the learned trial court recorded on issues No.5, 6 and 7 were not assailed by the learned counsel for the parties at the time of hearing arguments in this appeal and these are also affirmed.*

18. *No other point was urged before me.*

19. *Due to the reasons stated above, I am of the view that there is no merit in this appeal. It is liable to be dismissed. It is accordingly dismissed with costs, Decree-sheet be prepared. This file be consigned to the record room."*

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14. Shorn of unnecessary details, the submissions in RSA-3013-1999 are that the impugned order is a nullity and there is no limitation to challenge the same and that as the order of dismissal from service was passed under the Cooperative Societies Act, there was no bar to challenge the same in civil Courts. Submissions in RSA-2872-1999 is that finding of learned First Appellate Court on issue No.1 that non-supply of copy of inquiry report was fatal to the punishing authority is wrong and liable to be reversed. Learned counsel for the appellant in RSA-2872-1999 supports the judgment/ decree passed by the learned trial Court.

15. From the perusal of the impugned judgment of the first Appellate Court and the reasons recorded therein, it is clear that there is no substance in the arguments of learned counsel for the appellant in RSA-2872-1999. In my opinion, the learned First Appellate Court has rightly reversed the findings of learned trial Court on issue No.1.

16. *Qua* RSA-3013-1999, having perused the impugned judgment of learned First Appellate Court, my considered opinion is that the submissions made by learned counsel for the appellant before the learned First Appellate Court were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. In its judgment, the learned First Appellate Court held *inter alia* as under:-

“16. xx xx xx. Even otherwise, this is a dispute between an employee and a Co-Op. Society and as per the law laid down by the Hon’ble High Court of Punjab & Haryana, Chandigarh in a an authority reported as Ram Singh versus The Gandadhar Agriculture Co-Op. Societies 1975 P.L.R. 201 suit is barred under Section 82 of the Punjab Co-Op. Societies Act, 1961.”

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16.1 I am inclined to agree with the same. I find no substance in the submission that there was/ is no limitation to challenge the impugned order of dismissal from service.

17. To my mind, judgment of learned First Appellate Court under challenge has been correctly rendered after due appreciation of record including the evidence adduced by the parties.

18. There seems no perversity or illegality in the findings of facts and law returned by the learned First Appellate Court. No interference is thus called for to disturb the said findings. In this second appeal, no fresh ground worthy of interference is made out.

19. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

20. As an upshot of my preceding discussion, both the appeals are dismissed, being bereft of any merit. Resultantly, impugned judgment and decree passed by learned First Appellate Court is upheld.

21. Pending application(s), including IOIN-RSA-2872-1999 for service of respondent No.2, shall also stand disposed of.

22. No order as to costs.

**(ARUN MONGA)
JUDGE**

January 18, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No