

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

(229)

RSA-4719-2016

Date of Decision : 27.04.2023

Rajbir Singh Nehra**...Appellant****Versus****Haryana State Agricultural Marketing Board****...Respondent*****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI***

Present: Mr. N.C. Kinra, Advocate for the appellant.

Mr. S.K. Mahajan, Advocate for the respondent.

Harsimran Singh Sethi J. (Oral)

The present regular second appeal has been filed against the judgment and decree of the courts below by which the claim raised by the appellant-plaintiff that he is entitled for arrears for the salary from 02.09.1986 to 10.04.1997 along with interest, has been declined.,

It may be noticed that vide order dated 04.09.1997, two persons, namely, Rajbir Singh Dahiya and the appellant herein were promoted as Arrival Recorder with retrospective effect with the clear indication that they will not be entitled for any arrears of salary for the retrospective promotion. Appellant-plaintiff feeling satisfied by the said condition imposed, did not challenge the same whereas, the other candidate, namely, Rajbir Singh Dahiya feeling aggrieved against the non-grant of the arrears, filed a civil suit. The civil suit filed by Rajbir Singh Dahiya was dismissed by the trial court vide judgment and decree dated 29.06.2006.

Thereafter, against the judgment and decree of the trial court passed against Rajbir Singh Dahiya, he filed an appeal before the lower appellate court and the appeal came to be allowed on 24.11.2006 holding that Rajbir Singh Dahiya is entitled for the salary for the intervening period. The order passed by the lower appellate court was confirmed by this Court on 04.12.2007 and thereafter, even the SLP filed, upheld the grant of arrears in favour of Rajbir Singh Dahiya.

On coming to know that Rajbir Singh Dahiya has already been granted the arrears of salary, without challenging the order dated 04.09.1997, as the limitation to challenge the said order had already expired, suit was filed by the appellant-plaintiff in the year 2010 claiming the benefits of arrears on account of retrospective promotion on the ground that the same has already been allowed in favour of a similarly situated employee, namely, Rajbir Singh Dahiya, who was junior to the appellant. Thereafter, suit was filed, which was allowed by the trial court allowing the benefit of salary for the period from 02.09.1986 to 10.04.1997 along with interest vide judgment and decree dated 30.03.2015 on the ground that same relief has already been extended to Rajbir Singh Dahiya.

Feeling aggrieved against the said decision of the trial court, the respondent-defendant filed an appeal before the lower appellate court, which came to be decided on 09.05.2016. The lower appellate court held that once the appellant-plaintiff had not challenged the order dated 04.09.1997 and the said order is not under challenge even now, no benefit can be given as not challenging the order dated 04.09.1997 means acceptance of the conditions of the said order, according to which, no

benefit of arrears was to be granted. The judgment of the lower appellate court dated 09.05.2016 is under challenge in the present appeal.

Learned counsel for the appellant-plaintiff argues that once a benefit was already extended to a junior, who was also promoted along with appellant-plaintiff with the similar condition, being a Welfare State, the same relief should have also been allowed in favour of the appellant-plaintiff, hence, the non-grant of the said benefit by the lower appellate court by setting-aside the judgment and decree of the trial court is perverse and is liable to be set-aside.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is a conceded position that a specific order was passed against the appellant-plaintiff on 04.09.1997 restricting the non-grant of arrears on account of antedated promotion. The said order is not challenged at the hands of the appellant-plaintiff even as of now. Once, a specific order was passed declining the benefit of arrears of salary upon retrospective promotion, in the absence of any challenge to the said order, no relief could have been granted. The trial court misdirected itself in granting relief to the appellant-plaintiff merely on the ground that a similarly situated employee, namely, Rajbir Singh Dahiya, against whom also the similar condition of non-grant of arrears was imposed, has been granted the said benefit and the appellant-plaintiff also becomes entitled for the same relief, is an erroneous view. Once, a specific order was passed declining a particular benefit, the said order needs to be challenged in order to get the benefit. Once, there is no challenge to the order dated 04.09.1997 even in the present suit by the

appellant-plaintiff, no relief of arrears could have been granted.

It is a settled principle of law that even the void order needs to be challenged within a period of three years. The judgment of Hon'ble Supreme Court of India in Civil Appeal No. 1852 of 1989 with Civil Appeal No. 4772 of 1989 titled as ***State of Punjab and others Vs. Gurdev Singh and Ashok Kumar***, decided on 21.08.1991. The relevant paragraphs 4, 8 and 11 of the said judgment are as under :-

“4. 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 fall 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 of 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 11 3, 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 : Mt. Bole v. Mt. Koklam, AIR 1930 Privy Council 270 and Gannon Dunkerley and Co. v. Union of India, AIR 1970 Supreme Court 1433.

- 5. xxx xxx xxx xxx
- 6. xxx xxx xxx xxx
- 7. xxx xxx xxx xxx

8. It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for.

- 9. xxx xxx xxx xxx
- 10. xxx xxx xxx xxx

11. The Allahabad High Court in Jagdish Prasad Mathur and ors. v. United Provinces Government, AIR 1956 Allahabad 114, has taken the view that a suit for declaration by a dismissed employee on the ground that

his dismissal is void is governed by Article 120 of the Limitation Act. A similar view has been taken by Oudh Chief Court in Abdul Vakil v. Secretary of State and anr., AIR 1943 Oudh 368. That in our opinion is the correct view to be taken. A suit for declaration that an order of dismissal or termination from service passed against the plaintiff is wrongful, illegal or ultra vires is governed by Article 113 of the Limitation Act. The decision to the contrary taken by the Punjab & Haryana High Court in these and other cases (State of Punjab v. Ajit Singh, (1988)1 SLR 96 and State of Punjab v. Ram Singh, (1986)3 SLR 379 is not correct and stands overruled.”

In the present case, there is no challenge to the order by which the benefit of arrears was declined to the appellant-plaintiff, hence, in the absence of any challenge to the said order dated 04.09.1997 within a period of limitation, no relief could have been granted to the appellant-plaintiff, hence, the view taken by the lower appellate court is perfectly valid and legal.

As far as the claim of the appellant-plaintiff to be treated similar to Rajbir Singh Dahiya, it may be mentioned that though, in the case of Rajbir Singh Dahiya also, the same relief was declined by the department but he challenged the order dated 04.09.1997 before the competent court of law within the limitation period and succeeded in his claim. A person, who accepts the order cannot be treated equal to a person, who availed his remedy against the said order. It is a settled principle of law that the fence-sitter does not become entitled for the same relief, even if the benefit has been extended to a similarly situated employee. The judgment of Hon'ble Supreme Court of India in Civil Appeal No. 9849 of 2014 titled as ***State of***

Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava & Ors., decided on 17.10.2014 can be relief upon to record the said finding. The relevant paragraph 23 of the said judgment is as under :-

“23. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases

where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

Keeping in view the above, no ground is made out for interference by this Court qua the judgment and decree of the lower appellate court dated 09.05.2016.

Dismissed.

April 27, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No