

RSA-1210 of 1993 (O&M)

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

RSA-1210 of 1993 (O&M)

Reserved on: 04.04.2024

Pronounced on: 15.04.2024

Vijay Kumar

.....Appellant

Versus

The Punjab State

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -None for the appellant.

Mr. Rajesh Sehgal, Addl. A.G., Punjab.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 15.01.1993 passed by the Court of learned District Judge, Faridkot, whereby appeal preferred by the respondent-State against the judgment and decree dated 30.04.1991 passed by the Court of learned Sub Judge 3rd Class, Moga, vide which the suit of the appellant-plaintiff for declaration was decreed, has been accepted and suit of the appellant-plaintiff has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. The brief facts of the case are that the plaintiff was working as conductor in Punjab Roadways at Moga. The General Manager, Punjab Roadways, Moga vide order dated 28.5.1981 imposed upon the plaintiff the penalty of withholding of two annual increments with commulative effect. It was pleaded by the plaintiff that no enquiry was conducted against him. The show cause

notice is illegal, wrong and defective in nature. Copies of documents were not supplied along with the show cause notice. No personal hearing was given to the Plaintiff. The impugned order is alleged to be cryptic and non- speaking. Notice under Section 80 CPC was served upon the defendant before the filing of the suit.

3. The defendant filed written statement taking the preliminary objections that the suit is time barred and that no valid notice under Section 80 CPC was served upon the defendants. On merits, it has been stated that the plaintiff was working as conductor in Punjab Roadways at Moga. The impugned order is stated to be legal, valid and according to rules. It has been admitted that no departmental enquiry was conducted. All other assertions of the plaintiffs have been denied.

4. Replication was filed by the plaintiff denying the contents of the written statement and reiterating the contents of the plaint.

5. On the pleadings of the parties, following issues were framed:-

1. Whether the order dated 28-5-1981 recorded by G.M. Punjab Roadways Moga is illegal null and void as alleged? If so its effect? OPP
2. Whether valid notice U/S 80 CPC was served on the defendant? OPP
3. Whether the suit is time barred? OPD
4. Relief

6. The parties led their respective evidence. The Court of first instance, after appreciating evidence on record decreed the suit filed by the plaintiff vide judgment and decree dated 30.04.1991.

7. Feeling aggrieved against the said judgment and decree of the trial Court, defendant preferred an appeal before the lower appellate Court, which has been accepted vide judgment and decree dated 15.01.1993.

8. No one has put in appearance on behalf of the appellant.

9. Learned counsel for the respondent-State contended that judgment and decree of the lower Appellate Court is perfectly legal and valid inasmuch as the suit of the appellant-plaintiff was hopelessly time-barred, the same has rightly been dismissed by the learned lower Appellate Court.

10. I have heard learned State counsel and perused the record.

11. Hon'ble Supreme Court in ***State of Punjab and others v. Gurdev Singh and Ashok Kumar, 1991(4) SCC 1*** has held that limitation to file a suit for declaration is three years. Relevant portion from the said judgment reads 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 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 : **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. In the instant cases, the respondents were dismissed from service. May be illegally. The order of dismissal has clearly infringed their right to continue in the service and indeed they were precluded from attending the office from the date of their dismissal. They have not been paid their salary from that date. They came forward to the Court with a grievance that their dismissal from service was no dismissal in law. According to them the order of dismissal

was illegal, inoperative and not binding on them. They wanted the Court to declare that their dismissal was void and inoperative and not binding on them and they continue to be in service. For the purpose of these cases, we may assume that the order of dismissal was void, inoperative and ultra vires, and not voidable. If an Act is void or ultra vires it is enough for the Court to declare it so and it collapses automatically. It need not be set aside. The aggrieved party can simply seek a declaration that it is void and not binding upon him. A declaration merely declares the existing state of affairs and does not 'quash' so as to produce a new state of affairs.

*6. But none the less the impugned dismissal order has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or Court. In **Smith v. East Elloe Rural District Council, (1956) AC 736 at 769** Lord Redcliffe observed :*

"An order even if not made in good faith is still an act capable of legal consequences it bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

7. Apropos to this principle, Prof. Wade states: the principle must be equally true even where the 'brand of invalidity' is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision of the Court (see : Administrative Law 6th Ed. p. 352). Prof. Wade sums up these principles : "The truth of the matter is that the Court will invalidate an order only If the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash

it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is in reality valid. It follows that an order may be void for one purpose and valid for another, and that it may be void against one person but valid against another." (Ibid p. 352)

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."

12. Further, the Hon'ble Supreme Court in ***State of Punjab v. Rajinder Singh, 1999 SCC (L&S) 664*** making reference to the judgment in ***Gurdev Singh's case (supra)*** held as under: -

"4. After conducting departmental enquiry, by proceedings dated 10-12-1981, two increments with cumulative effect were stopped. The suit was filed on 15-1-1988. Article 58 of the Schedule to the Limitation Act 21 of 1963 prescribes three years limitation from the date of the order, to seek a declaration that the impugned order was illegal and did not bind him. The residuary provision is Article 113 also equally prescribes the limitation of three years. The limitation starts running from the date of passing of the order withholding increments. On expiry of three years from that date, the limitation expires by the efflux of time. Consequently, the suit gets barred by limitation. Section 3 of the Limitation Act directs the court to take notice of the bar of limitation before proceeding further. This legal position was set at rest by the judgment

*of this Court in **State of Punjab v. Gurdev Singh, (1991) 4 SCC 1**. The suit of the respondent is barred by limitation.”*

13. To the similar effect is the judgment of the Hon’ble Supreme Court in **State of Punjab and another v. Balkaran Singh, 2006(12) SCC 709**.

14. A Co-ordinate Bench of this Court in **Punjab State v. Hardev Singh, 1997(2) SCT 101** relying upon the above-referred judgments of the Hon’ble Supreme Court dismissed the suit of the plaintiff seeking decree of declaration as the same was filed beyond the prescribed period of limitation.

15. In the present case, order of stoppage of three annual increments of the appellant with cumulative effect was passed on 14.06.1980, whereas suit for declaring the said order illegal, null and void was filed on 29.08.1988 after a period of eight years, which is hopelessly time barred. Thus, the judgment and decree of the lower Appellate Court is perfectly legal and valid.

16. No question of law muchless substantial question of law arises for consideration in the present appeal.

17. In view of the settled proposition of law, appeal is dismissed.

18. Pending application(s), if any, stand disposed of accordingly.

(NAMIT KUMAR)
JUDGE

15.04.2024
R.S.

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No