

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(202)

RSA-1502-1993
Date of Decision : January 31, 2024

Sadhu Singh .. Appellant

Versus

State of Punjab .. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. H.K. Brinda, Advocate, for
Mr. Dharam Pal, Advocate, for the appellant.

Mr. Rohit Ahuja, Deputy Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present appeal, the challenge is to the judgment and decree of the lower Appellate Court dated 25.01.1993 whereby the suit filed by the appellant-plaintiff seeking fixation of his pay on the basis of the length of service by giving all the increments, which became due for each year of service with all consequential benefits, has been dismissed.
2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.
3. The appellant-plaintiff was appointed as Conductor in the year 1971 in Punjab Roadways. Being on a civil post, the appellant-plaintiff raised a grievance that keeping in view the rules governing the service, his pay needs to be fixed in the pay scale with a basic pay of Rs.600/-. After serving notice to the authorities concerned, the appellant-plaintiff filed a suit in the year 1989 claiming fixation of his pay on the basis of length of

service along with all increments and consequential benefits.

4. The respondents filed a reply stating that during the service career, 10 punishments were imposed upon the appellant-plaintiff stopping his increments with cumulative effect. Out of 10 punishments, six orders of punishment were passed in the year 1982 and the remaining punishment orders were passed from the year 1987 to 1989. Further, as per the respondents, the suit filed by the appellant-plaintiff in the year 1989 was time barred qua the punishments which have been imposed prior to the year 1987 and there is no specific challenge to the said orders.

5. The trial Court vide judgment and decree dated 15.09.1990 partly allowed the suit and directed that by ignoring the impugned orders of punishment, the pay of the appellant-plaintiff should be fixed and the consequential benefits should be allowed. The impugned orders of punishment qua the order dated 29.06.1982 and orders Ex. P7 to P11 were held to be illegal but order Ex. P12 and P14 were held to be valid.

6. It may be noticed that against the judgment and decree of the trial Court dated 15.09.1990, only the State filed an appeal but no appeal was preferred by the appellant-plaintiff.

7. Against the judgment of the lower Appellate Court dated 25.01.1993, State also filed an appeal being RSA No. 1380 of 1993, which was dismissed by the Coordinate Bench of this Court on 23.08.1993 however, the appeal filed by the appellant-plaintiff was admitted.

8. Learned counsel for the appellant-plaintiff argues that once the orders of punishment passed in the year 1982 were non-speaking, the same are void and cannot be taken into account for any purpose hence, the trial Court has rightly decided the said issue in the favour of the appellant-plaintiff.

9. On being asked to show as to how, an order passed in the year 1982 can be challenged in the year 1989 especially when the limitation to challenge the said order is three years, learned counsel for the appellant-plaintiff has not been able to show that in the absence of any challenge to the orders of punishment which were passed in the year 1982, how can the said order even be set aside by the trial Court while passing the decree in favour of the appellant-plaintiff.

10. As per the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.1852 of 1989 titled as State of Punjab and others vs. Gurdev Singh and Ashok Kumar, decided on 21.08.1991***, the limitation to challenge even a void order is three years. The relevant paragraph of the said judgment is 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 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 residu- ary 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 insti- tuted (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. It will be clear from these principles, the party ag- grieved 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.

*11. The Allahabad High Court in [Jagdish Prasad Mathur and Ors. v. United Provinces Government](#), AIR 1956 All 114 has taken the view that a suit for declaration by a dismissed employee on the ground that his dismissal is void, is gov- erned by [Article 120](#) of the [Limitation Act](#). A similar view has been taken by Oudh Chief Court in *Abdul Vakil v. Secre- tary of State and Anr.*, AIR 1943 Oudh 368. That in our opinion is the correct view to be taken. A suit for declara- tion 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 ((i)State of Punjab v. Ajit Singh,. [1988] 1 SLR 96 and (ii) State of Punjab v. Ram Singh, [1986] 2 SLR 379 is not correct and stands overruled.”

11. Learned counsel for the appellant-plaintiff has not been able to dispute the factum that the limitation qua the punishment orders passed in the year 1982 had already expired by the time the suit was filed in the year 1989 and further that even in the suit, there was no challenge to the orders of punishment. That being the factual position, as per evidence on record no perversity can be pointed out in the order of the lower Appellate Court so as to invite any interference by this Court.

12. Dismissed.

January 31, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No