

RSA-1504-1993

-1-

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(123)

RSA-1504-1993
Date of decision:- 16.04.2024

Amarjit Singh ... Appellant
Versus
State of Punjab and another ... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. H.R.Brinda, Advocate
for the appellant.

Ms. Amrita Garg, AAG, Punjab

SUVIR SEHGAL, J. (ORAL)

1. Plaintiff-appellant is in second appeal before this Court seeking modification of the judgment and decree passed by the Lower Appellate Court.
2. Brief facts may be noticed.
3. Plaintiff-appellant, who was working as a Conductor with the Transport Department, Punjab, was served with three show cause notices in the years 1983, 1985 and 1986 to which he submitted his replies. By virtue of orders dated 15.12.1983, Ex.P-6, 27.09.1985, Ex.P-4 and 13.01.1986, Ex.P-5, punishments of stoppage of increments were imposed. Claiming that the punishment orders were served upon him in December, 1984, October, 1985 and February, 1986, respectively, he filed a suit for declaration to the effect that the orders are null and void and for consequential relief.

RSA-1504-1993

-2-

4. Upon notice, suit was contested by the defendants-respondents by filing a written statement, wherein various preliminary objections, including that of limitation, was taken. It was submitted that the orders had been passed after complying with the principles of natural justice and considering the response filed by the plaintiff. On the basis of the pleadings of the parties, issues were framed and after evidence was led, Trial Court by judgment dated 24.10.1990, decreed the suit and declared all the three orders as void. In first appeal, preferred by the defendants, the judgment and decree of the Trial Court was upheld in so far as orders, EX.P-4 and Ex.P-5 are concerned, but in so far as order dated 15.12.1983, Ex.P-6 is concerned, the First Appellate Court came to the conclusion that the suit was barred by limitation. In this backdrop, plaintiff-appellant is before this Court in the present second appeal.

5. Counsel for the appellant has emphatically argued that order dated 15.12.1983, Ex.P-6, was served upon him in December, 1984. He has relied upon the judgment of this Court in ***Makhan Singh Versus The State of Punjab and others, 2009 (4) RSJ 59*** and has made a reference to para 4 of the pleadings to buttress his submissions.

6. Arguments addressed by the counsel for the parties have been considered and record has been examined.

7. In para 4 of the plaint, plaintiff has pleaded as under:-

“4. That the defendants served upon the plaintiff show cause notices in the year 1983, 1985 and 1986. The plaintiff submitted his replies to the said show cause notices but the punishing authorities without considering

RSA-1504-1993

-3-

those replies of the plaintiff, stopped two increments of the plaintiff vide order No.20725/T.I.dated 15-12-83, two increments vide order No.14878/T.I. dated 27-9-85 and one increment vide order No.650/T.I. dated 13-1-86, respectively, which were communicated to the plaintiff in the months of December 1984, October 1985 and Feb. 1986, respectively.”

8. In their written statement, defendants have replied as under:-

“4. That Para No.4 is admitted to the extent that the Show Cause notices and the orders alleged in this para were passed by the punishing authority but rest of the para is denied. The punishing authority duly considered the replies filed by the plaintiff before awarding the punishments.”

9. From a perusal of the respective stand of the parties as reproduced above, it is evident that the service of order, Ex.P-6, upon the appellant in December, 1984 has been denied by the respondents. As the parties were at variance, a specific issue (issue No.3) was framed. Although, the Trial Court returned the finding under issue No.3 in favour of the plaintiff, but the Lower Appellate Court on the basis of the material before it came to the conclusion that there is nothing on the record to show that the said punishment order was served on the appellant in December, 1984. The onus to prove that the suit was within limitation was on the plaintiff. In ocular evidence before the Trial Court, there is not even a whisper in the deposition of the plaintiff, as to the date on which order,

RSA-1504-1993

-4-

Ex.P-6, has been served upon him. He has, therefore, failed to support the stand taken in the pleadings.

10. It has been held by the Supreme Court in *State of Punjab and others Versus Gurdev Singh, (1991) 4 SCC 1* and *State of Punjab and another Versus Balkaran Singh, (2006) 12 SCC 709* that limitation for instituting a suit for declaration is three years under Article 58 of the Schedule to the Limitation Act, 1963. As the impugned order, Ex.P-6, was passed in December 1983 and the suit was instituted in January, 1988, the suit was clearly barred in so far as order, Ex.P-6, is concerned. This Court does not find any ground to interfere in the well reasoned judgment passed by the Lower Appellate Court, which deserves to be upheld.

11. Finding no merit in the appeal, it is hereby dismissed.

(SUVIR SEHGAL)
JUDGE

16.04.2024
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No