

RSA-2514 of 1993 (O&M)

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

RSA-2514 of 1993 (O&M)

Reserved on: 23.01.2024

Pronounced on: 07.02.2024

Manohar Singh (since deceased) through LRs

.....Appellants

Versus

State of Haryana and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

Present: - None for the appellant.  
Ms. Vibha Tewari, AAG, Haryana.

**NAMIT KUMAR, J.**

1. Instant Regular Second Appeal has been filed challenging the judgment and decree dated 18.05.1993 passed by the Court of learned Additional District Judge, Hissar, as well as against the judgment and decree dated 21.09.1992 passed by the Court of learned Sub Judge II Class, Hissar, whereby suit for declaration filed by the plaintiff-appellant has been dismissed.

2. Brief facts of the case are that plaintiff – Manohar Singh (since deceased) filed a suit for declaration to the effect that order dated 13.06.1978 passed by defendant No.2 terminating his services was wrong, null and void, against law and principles of natural justice and the same is liable to be set aside. It was pleaded that he was appointed as an Auditor in the Department of Cooperative Societies in the year 1956 and was promoted as Sub Inspector in that very Department in the year 1960 and thereafter posted as Inspector, Cooperative Societies in

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the year 1968. During the period August, 1974 to July, 1975, he was posted in Tosham Block, District Bhiwani. On a charge of embezzlement and misuse of official position, plaintiff and one Harbhaj Singh, Sub Inspector were placed under suspension and charge-sheeted. An enquiry was also ordered against the plaintiff and the aforesaid Harbhaj Singh on the basis of charge-sheet. A criminal case was also registered against the plaintiff and aforesaid Harbhaj Singh. Plaintiff and Harbhaj Singh were acquitted by the trial Court on 11.09.1980. On the basis of the report of Enquiry Officer, plaintiff was removed from service vide order dated 13.06.1978. It was pleaded that after their acquittal, Harbhaj Singh was reinstated into service, however, plaintiff was not reinstated.

3. Defendants filed written statement and denied allegations of the plaintiff. Plea was taken that the suit was barred by limitation.

4. From the pleadings of the parties, following issues were framed by the trial Court: -

1. Whether order dated 13.06.1978 vide No. Admn/T214/24561-640 passed by the respondent No. 2 by which the services of plaintiff were terminated is wrong, null and void, and against the principles of natural justice? OPP
2. Whether this court has no jurisdiction to try the present suit? OPD
3. Whether the suit is time barred? OPD
4. Whether the plaintiff has no cause of action to file the present suit? OPD
5. Relief.

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5. The parties led their respective evidence. The Court of first instance, after appreciating evidence on record vide judgment and decree dated 21.09.1992 dismissed the suit filed by the plaintiff.

6. Feeling aggrieved against the said judgment and decree of the trial Court, plaintiff preferred an appeal before the lower appellate Court, which also met the same fate vide judgment and decree dated 18.05.1993.

7. No one put in appearance on behalf of the appellant in spite of the last order wherein it was observed that no further adjournment shall be granted on the next date of hearing as the appeal is pending for the last 30 years.

8. Learned State counsel contended judgments of the Courts below are well-reasoned. She contended that claim of the appellant(s)-plaintiff has rightly been rejected as the same was barred by limitation inasmuch as limitation prescribed for filing a suit for declaration for impugning the penalty imposed, is three years in view of Article 113 of the Limitation Act, however, the present suit was filed by the plaintiff after the lapse of more than twelve years. In support of her contentions, learned State counsel relied upon the judgment of the Hon'ble Supreme Court in *State of Punjab and others v. Gurdev Singh and Ashok Kumar, 1991(4) SCC 1*.

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

10. Hon'ble Supreme Court in *Gurdev Singh's case (supra)* 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."*

11. 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.”*

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

13. A Co-ordinate Bench of this Court in **RSA-795 of 1996 – Pepsu Roadways Transport Corporation v. Hardev Singh – decided on 30.11.2023**, 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.

14. In the present case, it is apparent on the record that reinstatement of Harbhaj Singh into service was ordered by Registrar, Co-operative Societies, on the sole basis of his acquittal in criminal

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was completely associated with the enquiry proceedings and his appeal was dismissed in the year 1982. Appellant was dismissed on 13.06.1978, whereas suit for declaring the said order null and void was filed on 11.08.1990 i.e. after a period of more than eight years, which is hopelessly time barred.

15. Concurrent findings have been recorded by both the Courts below that suit of the plaintiff was barred by limitation, which do not call for any interference by this Court.

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

17. In view of the above, present appeal is dismissed.

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

07.02.2024  
R.S.

**(NAMIT KUMAR)**  
**JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No