

RSA-1070 of 1994

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

RSA-1070 of 1994

Reserved on: 15.03.2024

Pronounced on: 03.04.2024

Jagdish Chand

.....Appellant

Versus

State of Punjab and another

.....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. Instant Regular Second Appeal has been filed challenging the judgment and decree dated 30.08.1993 passed by the Court of learned Additional District Judge, Amritsar, whereby appeal filed by the respondents against the judgment and decree dated 13.08.1991, partly decreeing the suit for declaration filed by the plaintiff-appellant, has been allowed and the suit of the plaintiff has been dismissed with costs.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. The facts relevant for disposal of this regular second appeal are that the plaintiff filed a suit for declaration to the effect that the order bearing Nos.1260/TA dated 22.02.1983, 751/TA dated 04.02.1983, 700/TA dated 04.02.1983, 4227/28/TA dated 27.07.1983, 4224-25/TA dated 27.07.1983, 4218-19/TA dated 27.07.1983, 6760-63/Steno dated 04.04.1985, 2778-80/TA dated 23.09.1986, 4609-11/TA dated 16.05.1987, 4605-07/TA dated

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16.05.1987 and 5688-92/Steno dated 20.06.1988 passed against him, stopping annual increments with/without cumulative effect, be declared illegal, null and void and not binding upon the rights of the plaintiff, and the arrears thereof and other benefits withheld vide impugned orders, be granted to him. It is pleaded by the plaintiff that he is employed as a Conductor in the Punjab Roadways, Amritsar-I. The plaintiff has been performing his duties with due diligence. However, some false report have been made against the plaintiff by checking staff due to some ulterior motive. On the basis thereof, the plaintiff was served with charge-sheet(s)/show cause notice(s). However, no necessary material as required under the provision of law, was supplied to the plaintiff. No reasonable opportunity of being heard, was ever afforded to the plaintiff. Ultimately, the impugned orders stopping his increments with or without cumulative effect were passed. The plaintiff requested many times to withdraw the above-mentioned illegal orders, but to no avail.

3. Upon notice of the suit, defendants appeared and filed their separate written statements taking preliminary objections on the grounds of jurisdiction and time barred. On merits, it is pleaded that the impugned orders were passed in accordance with the provisions of law and prior to passing the same, the plaintiff had been afforded an opportunity of being heard.

4. From the pleadings of the parties the following issues were framed by the learned trial court:-

1. Whether the plaintiff is entitled to the declaration and the consequential relief prayed for?OPP

2. Whether the Civil Courts have no jurisdiction to entertain and try the present suit?OPD
3. Whether the suit is within time?OPP
4. Relief.
5. After hearing the learned counsel for the parties and appreciating the evidence led by the respective parties, the trial Court, vide judgment and decree dated 13.08.1991, partly allowed the suit of the plaintiff and had set aside the orders dated 04.02.1983, 04.02.1983, 22.02.1983, 27.07.1983, 27.07.1983, 27.07.1983, 23.09.1986, 16.05.1987, 16.05.1987 and 20.06.1988, however, suit qua the order dated 04.04.1985 was dismissed.
6. Feeling aggrieved against the said judgment and decree, the respondents filed appeal before the Appellate Court, which has been allowed, vide judgment and decree dated 30.08.1993.
7. There is no representation on behalf of the appellant-plaintiff.
8. Learned State counsel contended that after appreciating the material and evidence available on record, the Lower Appellate Court has rightly dismissed the suit of the plaintiff. There is no illegality or perversity in the judgment passed by the Lower Appellate Court. Furthermore, claim of the appellant-plaintiff qua the orders dated 04.02.1983, 04.02.1983, 22.02.1983, 27.07.1983, 27.07.1983, 27.07.1983 and 23.09.1986 is liable to be dismissed by applying the doctrine of delay and laches for the reason that the limitation prescribed for filing a suit for declaration for impugning the said orders, is three years in view of the provisions of the Limitation Act, however, the

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present suit was filed by the plaintiff after the lapse of the aforesaid stipulated period.

9. Indisputably, the plaintiff was working as a Conductor in the Punjab Roadways. On one hand, an employer has inherent power to suitably punish a delinquent employee, but on the other hand, the said inherent power is subject to certain restrictions so as to protect an employee against any sort of vindictive or capricious action. As such, the correct procedure is required to be followed by the employer.

10. Vide order dated 29.07.1994, while issuing notice of motion, following order was passed: -

“Notice of motion qua orders dated 16.5.1987 and 20.6.1988 only, for 3rd October, 1994. As regards rest, the appeal is dismissed.”

11. In the present case, the defendants being employer had passed the above-mentioned impugned orders qua the plaintiff, stopping his annual increments with/without cumulative effect. The plaintiff being an employee has challenged the same on the ground that due procedure has not been followed by the defendants. It is well settled that if a person has a legal or statutory right to be enforced against the authorities, he should ventilate his grievance before the competent authorities, within a time limit. But the fact remains that the plaintiff approached the court challenging the orders dated 04.02.1983, 04.02.1983, 22.02.1983, 27.07.1983, 27.07.1983, 27.07.1983 and 23.09.1986, after the lapse of statutory period of three years, as prescribed in the Limitation Act. The delay reflects inactivity and inaction on the part of the plaintiff- a litigant who has forgotten the basic

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norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix.

12. The 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.”

13. 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.”*

14. 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***.

15. 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

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declaration as the same was filed beyond the prescribed period of limitation.

16. It would be apposite to mention here that the trial Court dismissed the suit of the plaintiff qua the order dated 04.04.1985, vide which his one increment with cumulative effect had been stopped. However, the plaintiff did not prefer to file an appeal before the Appellate Court qua the same. Hence, no finding is required to be returned on the aforesaid aspect.

17. Furthermore, the Appellate Court has rightly observed that vide order(s) dated 16.05.1987, only minor punishment of stoppage of one or two increments without cumulative effect was imposed upon the plaintiff. In case of minor punishment, no inquiry is required. After considering the reply filed by the plaintiff, the concerned authorities have passed the order(s) dated 16.05.1987. Qua the order dated 20.06.1988, the Appellate Court has rightly observed that the same has been passed by the concerned authority after following the due procedure. Needless to mention here that in matters relating to service, the jurisdiction of the Civil Court cannot be considered to be so wide that it would enable it to sit in the appeal over disciplinary proceedings. The Civil Court cannot sit as court of appeal over the decision taken by the disciplinary authority and substitute its own findings. The judicial review is permissible not against the decision, but against the decision making process only.

18. In this present case, due procedure has been followed by the punishing authority while passing the order dated 20.06.1988. The punishing authority had agreed with the findings of the enquiry officer.

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Then, show cause notice was issued to the plaintiff and his reply was also considered and thereafter, the order dated 20.06.1988 had been passed. As such, this Court finds that no illegality has been committed by the punishing authority while passing the order dated 20.06.1988.

19. In view of the above, the impugned judgment and decree passed by the Appellate Court, reversing the judgment of the trial Court, is upheld and the present regular second appeal is dismissed.

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

03.04.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No