

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 2128 of 1991 (O&M)

The State of Punjab and Another
... Appellant(s)

Versus

Balwinder Singh
... Respondent(s)

2. Regular Second Appeal No. 2276 of 1991 (O&M)

The State of Punjab and Another
... Appellant(s)

Versus

Mangal Singh
... Respondent(s)

3. Regular Second Appeal No. 474 of 1993 (O&M)

Karam Chand
... Appellant(s)

Versus

The Punjab State and Another
... Respondent(s)

AND

4. Regular Second Appeal No. 1811 of 1993 (O&M)

Darshan Lal
... Appellant(s)

Versus

State of Punjab and Another
... Respondent(s)

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**RESERVED ON: 17.11.2023, 30.11.2023 AND 18.12.2023
PRONOUNCED ON: 09.01.2024**

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Vikas Arora, Assistant Advocate General,
Punjab, for the appellants (In RSA-2128-1991 and
RSA-2276-1991) and for the respondents
(In RSA-474-1993 and RSA-1811-1993).

Mr. Prateek Mahajan, Ms. Prerna Malholtra and
Mr. Mayank Vashishth, Advocates, for the appellant
(In RSA-474-1993) and for the respondent (In RSA-2276-
1991).

Mr. Dharampal, Advocate
for the appellant (In RSA-1811-1993).

Mr. Rakesh Sobti, Advocate
for the respondent (In RSA-2128-1991).

Anil Kshetarpal, J.

1. With the consent of the learned counsel representing the parties,
a batch of four regular second appeals involving the identical issue shall
stand disposed of by this common judgment.
2. After having heard the learned counsel representing the parties,
the following issue arises for adjudication:-

“Whether the suit for the grant of decree of declaration
that the order passed by the Punishing/Disciplinary Authority to
the effect that the said order is illegal, null and void or the
employee continues to be in service is required to be filed
within a period of three years, as provided under Article 58/113
of the Schedule attached to the Limitation Act, 1963
(hereinafter referred to as “the 1963 Act”), from the date when a
copy of the order of punishment was communicated?”

3. This issue has been arising before the Courts from time to time. The civil suit filed for the grant of decree of declaration is governed by the 1963 Act. There is a lot of debate with regard to the applicability of Article 58 and Article 113 of the Schedule attached to the 1963 Act, however, in this batch of appeals, this is not the issue that requires to be adjudicated. The only difference in both the Articles is with regard to the period of limitation mentioned in column No.3 of Schedule with respect to the said Articles. The expression “first accrues” governs and decides the period of reckoning limitation under Article 58 of the 1963 Act, whereas no such expression is used in the third column of Article 113 of the 1963 Act. Articles 58 and 113 of the 1963 Act are extracted as under:-

Article	Description of suit	Period of Limitation	Time from which period begins to run
58	To obtain any other declaration.	Three Years	When the right to sue first accrues.
59 to 112	XXX	XXX	XXX
113	Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three Years	When the right to sue accrues.

4. In *State of Punjab and Others v. Gurdev Singh, Ashok Kumar (1991) 4 SCC 1*, the Supreme Court, while overruling the judgments of this Court in *State of Punjab v Ajit Singh (1998) 1 SLR 96* and *State of Punjab v. Ram Singh (1986) 3 SLR 379* held that the plaintiff’s suit for the grant of decree of declaration that the order of dismissal or termination from service passed against the employee in a wrongful manner is illegal, null and void, would be governed by Article 113 of the 1963 Act and the suit cannot be filed at any point in time on the ground that such order is *void ab initio*. The Apex Court clearly held that even such suits shall be filed within the

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prescribed period of limitation as under Article 113 of the 1963 Act which is a residuary Article. In para 6 of the judgment, the Supreme Court held as under:-

“6. 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 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

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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: (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)."

5. After discussing the bare provisions of the Act as well as the precedents on the subject, it was held that the expression "right to sue" signifies that the right to file a suit accrues on the date the order is communicated to the employee. Thereafter, once again, this matter came up for consideration before the Supreme Court in ***State of Punjab and Others v. Rajinder Singh, Conductor (1999) SCC (L&S) 664***. In this case, the Court interpreted that the suit is required to be filed within a period of three years from the date the cause of action accrues. This case in particular was related to a punishment order stopping two increments with cumulative effect. Similarly in ***State of Punjab and Others v. Darshan Singh (1999) 4 SCC 226***, the Supreme Court reiterated the aforesaid view. Once again, this issue was examined in detail by the Supreme court in ***State of Punjab and Another v. Balkaran Singh (2006) 12 SCC 709***. After examining the various judgments passed by the Court from time to time, the appeal filed by the State of Punjab was allowed while setting aside the judgment and decree passed by all the three Courts below. In para 13, the Supreme Court held that the jurisdiction of the Civil Court to interfere in the disciplinary proceedings with respect to the quantum of punishment imposed is limited. Paras 13 and

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“13. The State filed Second Appeals before the High Court of Punjab and Haryana. The High Court, we are constrained to point out, without a proper application of mind, simply dismissed the Second Appeals, without even considering or attempting to answer properly the issues that arose for decision in the case. It appears to us 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 appeal over disciplinary proceedings, over the quantum of punishment imposed, over the entries in confidential records, and so on, in respect of which reliefs are seen to be freely granted by the courts in the States of Punjab and Haryana. In the case of grant of reliefs in matters relating to services, we feel that the High Court ought to make a deeper scrutiny of the decrees to see whether the Civil Court has overstepped its jurisdiction in granting the reliefs instead of simply rejecting the Second appeals on the basis that concurrent findings have been rendered by the trial court and the first appellate court. In the case on hand, the High Court made no attempt to see for itself whether on the basis of the rules and the arguments put forward on behalf of the State, the respective plaintiffs could be fitted in the scale of pay of Rs.1200-1850/- and in the third suit where the earlier decree became final, whether the reliefs claimed could be granted merely on the ground that there was an earlier decree in favour of the plaintiff therein granting him a higher scale of pay. Similarly, the question of limitation was disposed of even without referring to the relevant article in the schedule to the Limitation Act had application and without considering whether it was open to any court to upset a seniority list of the year 1980 in a suit of the year 1993 even when all the affected parties were not impleaded or were not before the Court. It is for these reasons that we are constrained to observe that the Second Appeals were dismissed in a cursory and most

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unsatisfactory manner by the High Court. The State has challenged these decisions by way of these Civil Appeals.

14. XXXX XXXX XXXX XXXX XXXX

15. *We shall first deal with the first two suits relating to the declaration that the plaintiffs therein are entitled to be placed in the revised scale of pay of Rs.1200-1850/-. The suits filed are for declaration that the order or endorsement dated 13.3.1980 was illegal and void. The suits were filed more than 12 years after the order fixing the revised scale of pay at Rs.940-1850/-. A suit for declaration is governed by Article 58 of the Limitation Act and the period is three years and the terminus au quo is "when the right to sue first accrues".(emphasis supplied) Clearly, the right to seek the relief of declaration that they are entitled to revised scale of pay of Rs.1200-1850/-, accrued to the plaintiffs on 13.3.1980, when the endorsement in that behalf was made by the Director of Agricultural Services and the plaintiffs were denied revised pay at Rs.1200-1850/- and were paid only at Rs.940-1850/-. It was not the mere making of an order, but an action that had immediate impact on the right of the plaintiffs to recover a higher salary as per their claim. The cause of action thus clearly arose for the first time. Thus the suit for declaration was clearly barred by limitation going by Article 58 of the Limitation Act. The fact that some other officer had been given a decree for the enhanced revised scale, does not furnish the plaintiffs in the first two suits with a fresh cause of action. It is well settled that the time does not stop to run once it has started to run. Therefore, the reliance placed on the decree in Civil Suit No. 461 of 1991 had absolutely no relevance on this question. Strictly speaking, Civil Suit No. 461 of 1991 also ought not to have been decreed since that suit was clearly barred by limitation, since the order sought to be challenged in that suit of 1991 was also the order dated 13.3.1980. But in view of the decree passed therein, it is not for*

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us now to go into the correctness or otherwise of the decision rendered therein. Suffice it to say that the said decision cannot give the plaintiffs a fresh cause of action. The time started to run when the right to sue first accrued to the plaintiff and that first accrual was clearly on 13.3.1980 and on expiry of 3 years therefrom, the suit for declaration became barred.”

6. It shall be noted here that this case is related to the limitation period for filing a suit for declaration, whereby the office order while fixing the pay of the employee was claimed to be illegal, null and void. In this case also, the Court held that the suit is required to be filed within a period of three years from the date the order is communicated.

7. Thereafter, the two different Division Benches of this Court in ***Randhir Singh v. State of Punjab 1994 (3) RSJ 110*** and ***Amar Singh v. State of Punjab 2006 (3) SCT 524***, again reiterated the view of the Supreme Court in ***Gurdev Singh’s case (supra)***.

8. However, a different view was taken in ***Malkiat Singh v. State of Haryana 2007 (4) Service Cases Today 801***. On the careful perusal of this judgment, it is evident that the Court distinguished the judgments passed in ***Gurdev Singh’s case (supra)***, ***Randhir Singh’s case (supra)*** and relied upon the judgment passed in ***Shri Madhav Laxman Vaikunthe v. State of Mysore AIR 1962 Supreme Court 8*** and ***P.L.Shah v. Union of India and Another 1989 (1) Service Law Reporter 573*** and it was held that the order of stoppage of increments with cumulative effect gives rise to a continuous/recurring cause of action which shall not be ordinarily objected to by the State.

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Laxman Vaikunthe's case (supra). In the aforesaid case, the matter in issue was regarding the order of reversion passed against a public servant due to an adverse finding against him in a departmental enquiry for misconduct and the sustainability of such order. The Supreme Court, ultimately, held that his reversion to the substantive rank was not sustainable. On the sidelines, the Court, while making an observation, restricted the claim to three years and two months before filing of the suit. Hence, the prescribed period of limitation was not the main issue which was decided by the Supreme Court. In *P.L.Shah's case (supra)*, the employee was suspended. He was kept under suspension for a long time and he claimed that he is entitled to more than 50% of the suspension allowance. In that context, the Supreme Court made certain observations. In the aforesaid case, the employee did not challenge the validity of any order passed by the Disciplinary Authority.

10. The learned counsel representing the respondents have also relied upon the judgment passed in *State of Punjab v. Shri Premjit and Another 2010 (3) RSJ 513*. This appeal was dismissed while relying upon the judgment passed in *Malkiat Singh's case (supra)*. They have also relied upon the judgment passed in *Union of India and Others v. Tarsem Singh (2008) 8 SCC 648*. It is evident that this judgment has been delivered while deciding a writ petition. The provisions of the 1963 Act were not the subject matter of challenge before the Supreme Court. The dispute arose with regard to the claim of an employee who was invalidated out of the Army service citing medical reasons. He claimed pension after a period of 16 years of his invalidation. The Court, while relying upon the principle underlying

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pension falls in that category. In this case, the Supreme Court relied upon the judgment in *Balakrishna S.P. Waghmare vs. Shree Dhyaneswar Maharaj Sansthan AIR 1959 SC 798*. This was the case of hereditary worshipers. Their claim for possession was declined ultimately also by the Supreme Court on the basis of the period of limitation provided under Article 124 of the Limitation Act, 1908. Even the judgment passed in *M.R.Gupta v. Union of India (1995) 5 SCC 628* was discussed which arose from the issue of improper pay fixation. The writ petition filed by the petitioner was rejected. The Supreme Court, while relying upon the principle underlying continuing wrongs and recurring/successive wrongs, reversed the judgment. Another judgment relied upon by the respondents is judgment passed by the Supreme Court in *Shiv Dass v. Union of India (2007) 9 SCC 274*. This case relates to the issue of disability pension and the Court in this case also applied the principle of continuing wrongs.

11. Another judgment passed in *State of Punjab v. Kirpal Singh and Another (Civil Writ Petition No. 1989 of 1993, decided on 20.09.2013)* has also been cited by them. This case arose from the award passed by the Presiding Officer, Industrial Tribunal, Punjab. In this case also, the Court relied upon the judgments rendered in *Malkiat Singh's case (supra)* and *Shri Premjit's case (supra)*.

12. They have also relied upon the judgment passed in *State of Punjab v. Nirranjan Singh 2015 (1) RSJ 323*. In this case, the judgment in *Shri Premjit's case (supra)* and *Kulwant Singh Gill v. State of Punjab 1991 (1) RSJ 413* were relied upon. The judgment in *Kulwant Singh Gill's case*

discusses that whether the issue of the penalty of stoppage of

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increments with cumulative effect was a major or minor penalty. The Supreme Court, in the aforesaid case, held that it is a major penalty. In that case the period of limitation in filing the suit was not the issue before the Supreme Court.

13. Before relying upon the judgments passed by the Court as the binding precedents, the Court is required to examine about the main issue that arose in the case and decide it accordingly. In legal terms, the essential reasoning or principle underlying the Court's decision in a particular case is called '*Ratio Decidendi*'. It represents the crucial and legally binding part of the judgment that establishes the precedent for future cases with similar issues. In *Dr.Rajbir Singh Dalal v. Chaudhary Devi Lal University, Sirsa and Others (2008) 9 SCC 284*, it was held that the decision of the Court cannot be treated as the Euclid's formula and read and understood mechanically. A decision must be considered on the facts of that particular case. Similarly, it was further held by the Supreme Court in *AIR 1968 Supreme Court 648* that a decision is only an authority for what it actually decides. The essence of a decision given by a Court is its ratio and not every observation found therein and not what logically follows or flows from the various observations made in it. In *Punjab State Electricity Board v. Ashok Kumar Sehgal AIR 1990 Punjab 117*, the Court held that the laws laid down by the Apex Court are binding on all the Courts and such law sets a precedent for all the Courts. Hence, the Courts are bound to grant reliefs in consonance with the law laid down by the Supreme Court. Similar view was expressed in *Union of India v. Dhanwanti Devi (1996) 6 SCC 44*.

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Singh's case (supra), the Bench was not apprised of the judgments passed by the two different Division Benches in *Randhir Singh's case (supra)* and *Amar Singh's case (supra)*. Hence, the judgment passed by the learned Single Bench in *Malkiat Singh's case (supra)* is no longer a binding law in view of the subsequent Supreme Court judgments. In the remaining decisions of this Court, the judgment passed in *Malkiat Singh's case (supra)* has been followed. *Gurdev Singh's case (supra)* has also been followed recently by the Supreme Court in *Prahlad Raut v. All India Institute of Medical Sciences (2021) 14 SCC 472*.

15. Keeping in view the aforesaid discussion and the observations made by the Supreme Court in *Balkaran Singh's case (supra)*, it is held that the suit for declaring the punishment order passed by the Punishing/Disciplinary Authority as illegal, null or void is required to be filed within a period of three years as provided under Article 58 or 113 of the Schedule attached to the 1963 Act from the date when the copy of order is communicated.

16. Now, the Court shall proceed to examine the individual cases. In the **Regular Second Appeal No. 2128 of 1991**, respondent-Balwinder Singh, who was working as a Conductor in the buses run by the Punjab Roadways, Tarn Taran, filed a suit on 20.04.1987, for declaration that as many as 19 different punishment orders passed by the Disciplinary Authority while stopping his various increments with cumulative effect are illegal, null and void. The trial Court held that the order dated 23.12.1974, is illegal, null and void. As regards the remaining orders, the suit was held to be barred by

the period of limitation. The Additional District Judge reversed the judgment

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of the trial Court and held that the void order is not required to be challenged while relying upon the judgment passed by the High Court in *State of Punjab v. Jagdish Ram Mittal 1989 (1) RSJ 41*. Except the punishment order dated 16.05.1984, the First Appellate Court held that there is no prescribed time period for filing a suit for declaration that the punishment orders passed by the Disciplinary Authority are illegal, null and void and they can be challenged at any time.

17. Keeping in view the aforesaid discussion, the decision of the First Appellate Court is not sustainable. Hence, the judgment passed by the First Appellate Court is set aside.

18. In *Darshan Lal v. State of Punjab and Another (Regular Second appeal No. 1811 of 1993)*, the First Appellate Court has relied upon the judgment in *Gurdev Singh's case (supra)*. In this case, the suit for the grant of decree of declaration was filed on 18.08.1990, claiming pay fixation on the basis of the tenure of his service. In the written statement, it was disclosed that as many as ten punishment orders have been passed against the plaintiff/appellant between 07.04.1973 to 22.05.1990. The First Appellate Court held that with respect to the punishment orders passed on 29.12.1987, and 22.05.1990, though the suit was filed within limitation period, however, those orders have been passed after following the procedure prescribed under the rules. With respect to the remaining eight punishment orders, the suit was held to be barred by time.

19. Keeping in view the aforesaid discussion, there is no substance in the present appeal. Hence, the same is liable to be dismissed.

Second Appeal No. 474 of 1993), the appellant filed a suit for declaration on 10.04.1986, with respect to 12 punishment orders passed between 25.06.1974 to 18.04.1978, while stopping his various increments with cumulative effect. Though the trial Court decreed the suit, however, the First Appellate Court, while relying upon the judgment in *Gurdev Singh’s case (supra)*, reversed the judgment of the trial Court.

21. Keeping in view the aforesaid discussion, there is no merit in the present appeal. Hence, the same is dismissed.

22. In *State of Punjab and Another v. Mangal Singh (Regular Second Appeal No. 2276 of 1991)*, the respondent-plaintiff Mangal Singh filed a suit on 23.02.1999, for the grant of decree of declaration that the various punishment orders passed by the Disciplinary Authority, while stopping his increments with cumulative or without cumulative effect between 05.03.1982 to 23.08.1987, were illegal, null and void. The First Appellate Court has compiled the information with regard to the various orders in the following manner:-

Sr.No.	Date of Impugned Order	Punishment Awarded
1.	05.03.1982	Stoppage of three increments for 4 years
2.	24.11.1982	Service Censured.
3.	04.02.1983	Stoppage of two increments with cumulative effect.
4.	04.02.1983	Stoppage of one increment for two years.
5.	11.05.1983	Stoppage of one increment with cumulative effect.
6.	24.11.1983	Stoppage of two increments with cumulative effect.
7.	19.11.1984	Stoppage of one increment with

		cumulative effect.
8.	30.03.1987	Stoppage of three increments with cumulative effect.
9.	23.08.1986	Stoppage of one increment with cumulative effect.
10.	13.04.1987	Stoppage of one increment with cumulative effect.
11.	31.07.1987	Stoppage of two increments with cumulative effect.
12.	28.08.1987	Stoppage of one increment with cumulative effect.
13.	16.10.1986	Censured.
14.	23.10.1986	Censured.

23. The trial Court partly decreed the suit. It was held that the punishment order dated 30.03.1987, while stopping his three increments with cumulative effect was passed after holding a departmental inquiry, hence, does not require any interference by the Court. Two appeals were filed. One by Mangal Singh and second by the State of Punjab. In the aforesaid appeal, the First Appellate Court held that in fact, two alleged orders passed on 16.10.1986, and 23.10.1986, were never passed or given effect to. The finding of the trial Court that the order dated 30.03.1987, has been correctly passed was upheld. However, no relief qua the remaining punishment orders was granted and both the appeals were dismissed.

24. It shall be noted here that the punishment orders dated 23.08.1986 and 31.07.1987, stopped the increments without cumulative effect. Hence, these orders reflect imposition of minor penalty, therefore, no departmental inquiry was required to be held. However, the First Appellate court has overlooked this fact. The suit qua the punishment orders dated

limitation i.e. three years. With regard to the punishment orders dated 05.03.1982, 24.11.1982, 04.02.1983, 11.05.1983, 24.11.1983 and 19.11.1984, the suit was filed beyond the prescribed period of limitation i.e. three years. Hence, the appeal filed by the State qua the aforesaid punishment orders is allowed. Resultantly, the decree of declaration to the effect that the punishment orders dated 13.04.1987 and 28.08.1987, are illegal, null and void, shall stand allowed, whereas the relief qua the remaining punishment orders shall stand dismissed.

25. The miscellaneous application(s) pending, if any, in all the appeals shall stand disposed of.

January 09, 2024

“DK”

(Anil Kshetarpal)

Judge

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No