

RSA-1667 of 1994

2024:PHHC:008146

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

RSA-1667 of 1994

Date of decision: 20.01.2024

The Pepsu Road Transport Corporation

.....Appellant

Versus

Rajinder Paul

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Raman Mahajan, Advocate, for the appellant.

Mr. C.L. Pawar, Advocate, for the respondent.

NAMIT KUMAR, J.

1. Instant Regular Second Appeal has been filed challenging the judgment and decree dated 03.02.1994 passed by the Court of learned District Judge, Patiala, whereby appeal filed by the respondent against the judgment and decree dated 12.03.1992, dismissing his suit for declaration, has been allowed.

2. Brief facts of the case are that plaintiff - Rajinder Paul (respondent herein) filed a suit for declaration to the effect that order dated 19.12.1983, passed by defendant No.2 – Deputy Managing Director, Pepsu Road Transport Corporation, Patiala, whereby one annual grade/increment of the plaintiff was stopped with cumulative effect, is illegal and the appeal rejected on 28.08.1984 by defendant No.1 – Managing Director is also illegal, unconstitutional and against the rules of natural justice and the plaintiff is entitled to promotion to the post of Assistant as he was to cross his efficiency bar after his

suspension, had he not been suspended. It was pleaded that plaintiff was appointed as Clerk in Pepsu Road Transport Corporation, Patiala, by defendant No.2 on 2.11.1979 and he had been working on this post according to satisfaction of superiors. He had been earning good reports and annual grade increments. His one annual grade increment had been stopped with cumulative effect vide orders dated 19.12.1983. The plaintiff was never informed that his A.C.R. has been recorded adverse. Plaintiff was issued a charge-sheet on baseless allegations on 24.06.1982. He filed reply to the said charge-sheet. Enquiry Officer was appointed and plaintiff was found guilty of one charge, that he remained absent from duty without any sufficient cause, without informing the defendant. The defendants without considering the reply to the show-cause notice ordered for the stoppage of one annual grade increment with cumulative effect. The plaintiff filed an appeal against the said order, which had been rejected on 28.08.1984 in an arbitrary manner by passing a non-speaking order.

3. Suit was contested by the defendants taking stand that fair and proper enquiry was conducted in the case of the plaintiff. He was afforded personal hearing. Appeal filed by the plaintiff was also dismissed after considering all the facts. Moreover the civil court had no jurisdiction to try this suit; suit was not legally maintainable and it was bad on account of mis-joinder of necessary parties.

4. Plaintiff filed replication to the written statement in which he reiterated the pleas taken by him in the plaint by denying those of the written statement.

5. 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 prayed for? OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Whether suit is bad for non-joinder of necessary parties? OPD
4. Relief.

6. The parties led their respective evidence. The Court of first instance, after appreciating evidence on record vide judgment and decree dated 12.03.1992 dismissed the suit filed by the plaintiff.

7. Feeling aggrieved against the said judgment and decree of the trial Court, plaintiff preferred an appeal before the lower appellate Court, whereby suit of the respondent-plaintiff was dismissed, which has been accepted vide judgment and decree dated 03.02.1994.

8. Learned counsel for the appellant contended that the lower Appellate Court erred in reversing the well-reasoned judgment of the trial Court. He further contended that claim of the respondent-plaintiff is liable to be dismissed as the 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 six years. In support of his contentions, learned counsel for the appellant relied upon the judgments of the Hon'ble Supreme Court in *State of Punjab and others v. Gurdev Singh and Ashok Kumar, 1991(4) SCC 1*; *State of Punjab v. Rajinder Singh, 1999 SCC (L&S) 664*; *State of Punjab and*

another v. Balkaran Singh, 2006(12) SCC 709 and order of this Court in ***RSA-795 of 1996 – Pepsu Roadways Transport Corporation v. Hardev Singh – decided on 30.11.2023.***

9. Learned counsel for the respondent could not dispute the abovesaid legal proposition and during the course of arguments he has also informed that respondent has already retired from service.

10. I have heard learned counsel for the parties and perused the record.

11. 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."

12. Further, the Hon'ble Supreme Court in ***Rajinder Singh's case (supra)*** 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."*

13. To the similar effect is the judgment of the Hon'ble Supreme Court in ***Balkarn Singh's case (supra)***.

14. A Co-ordinate Bench of this Court in *Hardev Singh's case (supra)* 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.

15. In the present case, order of stoppage of one annual increment of the respondent with cumulative effect was passed on 19.12.1983, whereas suit for declaring the said order void abinitio, illegal, beyond the scope of rule of natural justice and the service rules was filed on 13.01.1990 i.e. after a period of more than six years, which is hopelessly time barred. Thus, the judgment and decree of the lower Appellate Court, reversing the well-reasoned judgment of the trial Court, is not sustainable in the eyes of law.

16. In view of the settled proposition of law, appeal is allowed. Judgment and decree passed by the lower appellate Court is set aside and the suit filed by the respondent is dismissed, as the same was beyond the prescribed period of limitation.

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

(NAMIT KUMAR)
JUDGE

20.01.2024
R.S.

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No