

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.501 of 1994 (O&M)
Reserved on: 19.04.2024
Pronounced on: 30.04.2024

State of Haryana and others
.....Appellants
Versus
Harcharan Kaur
.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Ravi Dutt Sharma, DAG, Haryana
for the appellants.

Mr. Ashish Gupta, Advocate
for the respondent.

NAMIT KUMAR J. (Oral)

1. The instant regular second appeal is directed against the judgment and decree of reversal dated 08.09.1993, passed by the learned Additional District Judge, Hisar, whereby the suit for declaration filed by the respondent/plaintiff was allowed and the judgment and decree dated 14.01.1993, passed by the learned Sub-Judge, IInd Class, Hisar, was set-aside and the order passed by the defendant stopping the efficiency bar of the plaintiff which fell due on 01.02.1976, was held to be illegal and against the principles of natural justice and the respondent/plaintiff was held entitled to all the arrears of benefits accrued to her and further entitled for pay fixation in the revised pay-scale. Parties to the lis, are hereinafter, shall be referred to by their original position in the suit.
2. Briefly stated, the facts of the case are that the plaintiff filed a suit on 01.10.1986, seeking declaration that the order of stopping

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the efficiency bar of the plaintiff, which was due on 01.02.1976, is illegal, ultra-vires, ineffective, inoperative and against the principles of natural justice and equity and not binding on the rights of the plaintiff. It was pleaded in the suit that the plaintiff joined as Auxiliary Nursing Midwife (ANM) on 07.03.1968 on ad hoc basis. Thereafter, her name was recommended by the Subordinate Services Selection Board, Haryana, and she was allowed to continue in service on temporary basis vide Office Order dated 04.12.1970 and she was adjusted against the post of Lady Health Visitor (LHV) in the pay-scale of Auxiliary Nursing Midwife (ANM) vide Office Order dated 20.04.1983. She was due to cross her efficiency bar at the stage of Rs.160/- in the pay-scale of Rs.130-5-160/5-200, w.e.f. 01.02.1976. The matter regarding crossing of efficiency bar of the plaintiff was duly considered by the competent authority and the plaintiff was stopped to cross the efficiency bar for a period of 01 year w.e.f. 01.02.1976 vide its order dated 16.08.1976 as she had not earned at least 50% good ACRs. Her case was again reviewed from time to time and she was again stopped to cross the efficiency bar vide office letters No.73/H(8)-3.F.W.-86/4123 dated 21.03.1986, 13800 dated 17.11.1986, 13802 dated 17.11.1986 and 13804 dated 17.11.1986 and all these orders were duly conveyed to the plaintiff, however, these orders were not challenged by the plaintiff in the suit. She was issued charge-sheet under Rule 7 of the Punjab civil Services (Punishment and Appeal) Rules, 1952, for disobeying the orders of the superior and also being absent from duty without permission and spoiling work environment at her work place.

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Consequently, she was awarded punishment of stoppage of one annual increment with cumulative effect and her absence period w.e.f. 26.11.1976 to 01.04.1977, was treated as leave without pay vide order dated 30.10.1980.

3. The suit filed by the plaintiff was dismissed by the learned Sub-Judge, IInd Class, Hisar, vide judgment and decree dated 14.01.1993, by recording the following findings:-

“He further contended that when the adverse ACRs were not conveyed to the plaintiff, they could not be the basis for not allowing the efficiency bar to be crossed. On this point learned counsel for plaintiff referred to numerous authorities. He relied upon 1989(4), SLR, page 145, titled as 'Gopal Yeswantrae Shende vs The State of Maharastra and other'. I have gone through this authority very carefully. There is no dispute in the preposition that uncommunicated adverse remarks cannot be the basis for allowing the efficiency bar to be crossed. But the authority referred to by the counsel for the plaintiff do not advance the case of the plaintiff in any way because admittedly as per the policy of the government, a government employee can only be allowed to cross the efficiency bar if at least 50% of his/her confidential record is recorded as good. This proposition has not been denied by the counsel for the plaintiff at the time of argument. The defendants had produced on the file copies of the ACRs of the plaintiff from 1968-69 to 1985-86 which are Ex. D1 to D18. From documents Ex. D1 to D18, the gradation in respect of the ACRs earned by the plaintiff since 1968-69 is as under:-

Sr. No.	Year	Grading
(1)	1968-69	Below Average
(2)	1969-70	Below Average

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(3)	1970-71	<i>Below Average</i>
(4)	1971-72	<i>Average</i>
(5)	1972-73	<i>Below Average</i>
(6)	1973-74	<i>Below Average</i>
(7)	1974-75	<i>Good</i>
(8)	1975-76	<i>Average</i>
(9)	1976-77	<i>Below Average</i>

The efficiency bar of the plaintiff was due on 1.2.76 and order regarding stopping the efficiency bar due on 1.2.76 was passed on 5.8.76, the copy of which is Ex. D-19. At the time of considering the efficiency bar due on 1.2.76, the service record of the plaintiff from 1968-69 to 1975-76 was to be considered the perusal of the above grading speaks that plaintiff had earned good report in 1974-75. In 1971-72 and 1975-76 she was graded as average whereas in remaining years her ACRs were below average.

If the adverse entries recorded in the ACRs earned by the plaintiff till 1975-76 are not taken into consideration even then the plaintiff had not to his credit at least 50% good reports. Thus, vide order, dated 5.8.76 (Ex. D-19), the plaintiff was rightly stopped to cross the efficiency bar due on 1.2.76. I do not find any illegality in the order. Moreover, impugned order of stopping to cross the efficiency bar due on 1.2.76 was passed on 5.8.76 and the same was challenged on 20.9.86 i.e. after considerable period of 10 years. In view of the pronouncement of the Hon'ble Supreme Court, in case State of Punjab Vs. Gurdev Singh reported in 1991 (2), Recent Services Judgments at Page 541, even a void order cannot be challenged after three years. Therefore, this suit is also barred by limitation. Learned counsel for plaintiff raised the contention that point of limitation cannot be raised at this stage because defendants had not taken this plea in written statement. I am not taken this plea in written statement. I am not in

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agreement with the contention of learned counsel for plaintiff in this behalf because by now it is well settled law that legal question can be raised at any stage. In these circumstances, this issue is decided accordingly in favour of defendants and against the plaintiff.”

4. However, the appeal filed by the plaintiff was accepted by the Court of learned Additional District Judge, Hisar, vide judgment and decree dated 08.09.1993. The operative part of the said judgment passed by learned Lower Appellate Court, reads as under:-

“5. The appellant deserves to succeed. There was an assertion in the written statement that a charge sheet u/s 7 of the Rules was served upon the appellant. However, there was no further assertion whether the appellant had submitted an explanation in that respect or not and whether any enquiry followed or not. In the course of the replication, the appellant vaguely denied having faced any enquiry on the basis of the aforesaid allegations. As PW1, the appellant adopted an evasive attitude by stating that she has no idea that she had received any charge sheet or not. However, it does not solve the riddle for the defendants respondents who were duty bound to prove on the file the factum of an enquiry having been held on the basis of the alleged charge sheet.

6. As far as the alleged adverse A.C.Rs. are concerned, there is not even an iota of material on the file to prove that those had ever been communicated to the appellant. As per the instructions issued by the Haryana Government from time to time (copy thereof on the file), the Government have always impressed upon the departmental authorities the desirability of recording the annual confidential remarks for the relevant financial year as soon as the financial year is over. As per the instructions and

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principles of natural justice, adverse remarks have to be communicated to the affected employee in order to enable the latter to offer his explanation vis-a-vis those observations. As per the law of the land, uncommunicated adverse remarks carry no value in the eye of law. In this case, the only adverse A.C.Rs which persuaded the competent authority to with hold the crossing of efficiency bar of the appellant, are not proved on the file to have been communicated to the appellant. PW2 Dev Raj, an official posted at PHC Kharakrai Ji stated on the basis of the record that the record does not contain any communication to prove that the adverse A.C.Rs. had ever been communicated to the appellant. DW1 Sada Nand had to concede in the course of cross-examination that he had no record in his possession to prove that an opportunity of hearing had been afforded to the appellant before the stoppage of her increment. He had also no idea if any regular enquiry had been held against the appellant or not. The record brought by him also does not contain any enquiry report in that behalf.

7. It was for the defendants-respondents to produce unimpeachable evidence to prove that the adverse A.C.Rs. on the basis where of the crossing of the Efficiency Bar by the appellant was stopped, had been communicated to the appellant. There is no evidence on the file in that behalf. As held in State of Punjab Vs. Duni Chand and another 1980 (2) P.L.R. 608, the withholding of Efficiency Bar could be ordered only after show cause notice had been served upon the concerned employee. The view adopted by the learned trial Judge is thoroughly untenable.

8. A perusal of the file indicates that the suit was filed by the plaintiff-appellant after a lapse of about 10 years. However, as no plea on the point of limitation was

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taken up by the defendants-respondents before the learned trial court, as also before this court. this court is not called upon to take cognizance of that point. Though, a legal plea can be raised by the parties at any point of time, it is not for the court to take cognizance of the legal plea on its own when the affected party has in its own wisdom opted to stay quiet on that point.

9. For the above reasons, the finding recorded by the learned trial Judge on issue No.1 shall stand set aside. Issue No.1 shall stand disposed of in favour of the appellant and against the defendants-respondents. It is held that the impugned order dated 1.2.76 ordering the stoppage of efficiency Bar of the appellant, is illegal, without jurisdiction and against the principles of natural justice, finding recorded by the learned trial Judge under the other issues shall stand affirmed.

10. For the above reasons, the appeal shall stands allowed. The impugned judgment and decreed dated 14.1.93 stands set aside. The suit filed by the plaintiff-appellant shall stand decreed. The appellant is granted a decree for declaration that the order of stopping the efficiency bar of the plaintiff appellant which was due on 1.2.76 is illegal, ultravires, ineffective, imperative, without jurisdiction and against the principles of natural justice and equity and not binding on the rights of the plaintiff and is set aside and the plaintiff is held entitled to get all the arrears of the benefits accrued there by and she is also entitled to get the pay fix in the revised pay scale.”

5. The aforesaid judgment passed by the learned Lower Appellate Court is impugned by the State in the instant appeal.

6. Learned counsel for the appellants – State has argued that the suit filed by the respondent/plaintiff was hopelessly time barred and

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therefore, rightly dismissed by the learned trial Court and since the plaintiff was not having 50% or more good ACRs to her credit, therefore, she was rightly stopped to cross her efficiency bar and thus, the findings recorded by the learned trial Court are liable to be upheld and the findings recorded by the learned Lower Appellate Court are liable to be set-aside.

7. Per contra, learned counsel for the respondent submits that since adverse remarks in the ACRs were not conveyed, therefore, the same could not have been taken into consideration and since no issue was framed with regard to limitation before the trial Court, therefore, the suit filed by the plaintiff was wrongly dismissed by the learned trial Court and was rightly decreed by the learned Lower Appellate Court.

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

9. While issuing notice of motion on 20.05.1994, operation of the impugned judgment passed by the learned Lower Appellate Court was stayed and it has been pointed out during the course of hearing that the plaintiff already stood retired from service on attaining the age of superannuation on 30.04.2004.

10. The issue involved in the present appeal is whether the suit having been filed on 01.10.1986, is hit by limitation as the cause of action arose to the plaintiff on 01.02.1976, when she was stopped from crossing the efficiency bar and whether she was entitled to cross her efficiency bar once she was not having 50% or more good ACRs to her credit.

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11. So far as the issue of limitation is concerned, it is observed that the cause of action accrued to the plaintiff on 01.02.1976, when she was not allowed to cross her efficiency bar, however, the suit was filed on 01.10.1086 i.e. after a period of more than 10 years, which was hopelessly time barred. The Hon'ble Supreme Court in ***"State of Punjab and others v. Gurdev Singh and Ashok Kumar", 1991(4) SCC 1***, has held that even a void order is to be challenged within a period of limitation. 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

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*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

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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)

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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 ***State of Punjab v. Rajinder Singh, 1999 SCC (L&S) 664***, making reference to the judgment in ***Gurdev Singh’s case (supra)*** has 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 ***State of Punjab and another v. Balkaran Singh, 2006(12) SCC 709***.

14. A Co-ordinate Bench of this Court in *RSA No.795 of 1996* titled as *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.

15. So far as the second issue of stopping the plaintiff at the efficiency bar on 01.02.1976, when she was not having 50% or more good ACRs to her credit, it is observed that at the time of considering the claim of the petitioner for crossing the efficiency bar, which was due on 01.02.1976, the service record from 1968-69 to 1975-76 was considered. All the ACRs of the plaintiff are either below average or average except for the year 1974-75, which is good, therefore, she is not having 50% good ACRs, as required, and thus, she was rightly stopped to cross the efficiency bar due on 01.02.1976.

16. Accordingly, the present appeal is allowed and the judgment and decree passed by the learned Lower Appellate Court is set-aside and the suit of the plaintiff stands dismissed with no order as to costs.

17. All the pending miscellaneous applications, if any, are also disposed of.

30.04.2024
yakub

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No