

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

203

RSA-2539-1995 (O&M)
Date of Decision :19.03.2024

Balbir Kaur

...Appellant

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sukhjeet Singh, Advocate for the appellant.

Mr. Rohit Ahuja, DAG, Punjab.

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Harsimran Singh Sethi, J. (Oral)

1. In the present regular second appeal, challenge is to judgment and decree of the lower Appellate Court dated 24.04.1995, by which the suit filed by the appellant-plaintiff has been held to be time barred.

2. It may be noticed that husband of the appellant-plaintiff namely, Gurdev Singh was working as Laboratory Attendant in the office of Chief Agricultural officer, Sangrur. While working as such, a charge sheet dated 30.06.1983 was issued to him, however the husband of the appellant-plaintiff did not reply to the said charge-sheet and ultimately an Enquiry Officer was appointed and after proving the charges alleged in the said charge sheet dated 30.06.1983, services of the Gurdev Singh was terminated by the respondents vide order dated 08.03.1984.

3. It may be noticed that from the year 1982 onwards, Gurdev Singh has remained absent from duty and even after passing of the order of

termination dated 08.03.1984, Gurdev Singh never agitated the said termination order before any authority for a period of more than 05 years and he died on 11.06.1989. After the death of Gurdev Singh, appellant-plaintiff being a widow of Gurdev Singh filed a civil suit challenging the order of termination of service of Gurdev Singh dated 08.03.1984.

3. Learned trial Court held that the suit was maintainable on the ground that after the death of Gurdev Singh in the year 1989, a notice under Section 80 of the CPC was given by the appellant-plaintiff and in the reply of the said notice, it was mentioned that services of the Gurdev Singh had been terminated on 08.03.1994 i.e. during his lifetime hence, limitation period will only start from the date of the reply to the legal notice given by the appellant/plaintiff under Section 80 of the C.P.C. The suit filed by the appellant-plaintiff was allowed and order of termination of service of the Gurdev Singh was held to be bad by the trial Court vide judgment and decree dated 17.05.1993.

4. Feeling aggrieved against the said judgment and decree dated 17.05.1993 of the trial Court, respondent-State preferred an appeal before the lower Appellate Court, and the lower Appellate Court vide judgment and decree dated 24.04.1995 set aside the judgment and decree of the trial Court on the ground that once, the order of termination was passed qua Gurdev Singh during his life time and Gurdev Singh never agitated the said order till his death, after the death of Gurdev Singh, appellant-plaintiff cannot say that she came to know about the order of termination of service of Gurdev Singh only in the year 1990 hence, limitation period will start from the date of passing of the order of termination dated 08.03.1994 and the limitation period qua the said challenge already stood expired during the

life time of Gurdev Singh. Said judgment and decree of the lower Appellate Court dated 24.04.1995 is under challenge in this regular second appeal.

5. Learned counsel for the appellant-plaintiff submits that once, the trial Court recorded a finding that the widow of Gurdev Singh came to know about the order of termination in the year 1990 through the reply to the notice served by her under section 80 of the CPC, said findings are correct and the same have wrongly been set aside by the lower Appellate Court.

6. Learned counsel for the respondent-State submits that once, the order of termination was passed in the year 1984 and Gurdev Singh remained alive for a period of five years after the passing of the said order of termination, the findings recorded by the lower Appellate Court are correct and same are liable to be upheld.

7. I have heard learned counsel for the parties and have gone through the record with their able assistance.

8. It may be noticed that disciplinary proceedings were held against Gurdev Singh for remaining absent from duty. Charges were proved and order of termination was passed on 08.03.1984 i.e. during the life time of Gurdev Singh. In case, Gurdev Singh was aggrieved against the said order of termination from service, he could have raised the grievance during his life time but after the death of Gurdev Singh in the year 1989, appellant-plaintiff stepped into the shoes of the Gurdev Singh so as to challenge the order of termination dated 08.03.1984. Once, the appellant-plaintiff stepped into the shoes of Gurdev Singh, who had not challenged the order of termination during his life time and limitation period qua the challenge to the order dated 08.03.1984 had already expired, merely, that in the reply to

the notice served by the appellant-plaintiff under Section 80 of the CPC, a fact regarding the termination of service of Gurdev Singh was mentioned, the same will not provide a fresh limitation period to the appellant-plaintiff to file a civil suit.

9. Further, as per the judgment of the Hon'ble Supreme Court of India in *Civil Appeal No.1852-1989, titled as, State of Punjab and others vs. Gurdev Singh and Ashok Kumar, decided ib 21.08.1991*, even a void orders are to be challenged within a period of three years. Relevant paragraphs of the judgment are 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 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 "fight 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 [Art. 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 then 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).

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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.”

10. Keeping in view the above, as there is no perversity in the findings recorded by the lower Appellate Court qua the maintainability of the suit filed by the appellant-plaintiff qua the challenge to the order of termination of services of Gurdev Singh dated 08.03.1984, which was filed much after the expiry of limitation period, no ground for interference is made out by this Court and the present regular second appeal is accordingly dismissed.

11. Civil miscellaneous application pending, if any, is also disposed of.

March 19, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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