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

(227)

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Date of decision:- 14.05.2024

Pepsu Road Transport Corporation and another**... Appellants****Versus****Avtar Singh****... Respondent****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. Ajit Singh, Advocate for
Mr. Harsh Chopra, Advocate for the appellants.

Mr. D.D.Bansal, Advocate
for the respondent.

SUVIR SEHGAL, J. (ORAL)

1. Defendants are in second appeal before this Court challenging the concurrent finding of fact recorded by the Courts below.

2. Pleaded case of plaintiff-respondent is that he is working as a Conductor with the defendants and joined service on 11.01.1971. Vide order dated 23.12.1976 passed by defendant No.2, two annual increments have been stopped with cumulative effect by way of punishment and it has been further ordered that he will not be paid anything over and above the subsistence allowance already drawn by him. He challenged this order by filing a suit for declaration and consequential relief.

3. Upon notice, defendants-appellants filed the written statement taking various pleas, including an objection that the suit is barred by limitation. On merits, it was stated that the punishment order is legal and has been passed after following the procedure prescribed under the service



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rules. From the pleadings, issues were framed and after the parties led evidence, Trial Court by judgment 16.11.1994, decreed the suit. Defendants remained unsuccessful before the First Appellate Court and appeal filed by them was dismissed by the learned Additional District Judge, vide judgment dated 14.05.1996, resulting in the filing of the present appeal.

4. Counsel for the appellants has contended that the suit was barred by limitation as the penal order was passed on 23.12.1976, whereas the suit for declaration was filed by the plaintiff-respondent on 21.12.1993.

5. On the other hand, counsel for the plaintiff-respondent urged that the suit had been filed within the prescribed period of limitation as the punishment order was conveyed to the plaintiff in January, 1993. Another argument has been raised by him that as two annual increments have been stopped with cumulative effect, it has given rise to a recurring cause of action and the suit cannot be held to be time barred. Still further, he has asserted that the appellants did not address any argument on the issue of limitation before the First Appellate Court and therefore, they cannot raise this plea in second appeal.

6. I have considered the arguments addressed by counsel for the parties, besides examining the record with their able assistance.

7. Although, counsel for the plaintiff-respondent has argued that the impugned order was served upon him in January, 1993 and he had supported the assertion in the ocular evidence, but this stand has been rejected by the Trial Court. The finding recorded by the Trial Court while dealing with Issue No.2 is reproduced hereunder:-

“13. After hearing the rival contentions of both the sides and going through the file, I am of the opinion that



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argument put forward by the learned counsel for the plaintiff that the order was not conveyed to the employee till January, 1993 holds no water as it is the case of the plaintiff himself that his two annual increments were stopped in 1976. It is a matter of common knowledge that when there is loss to anybody, then one always comes to know that there is peculiarly loss to him. When annual increments were stopped in 1976, it cannot be believed that the plaintiff uptill the filing of the suit or till 1993 did not come to know that any order has been passed against him, especially when he was receiving lesser pay. Accordingly, the version of the plaintiff that order was conveyed in 1993 is not plausible. But there is certainly merit in the argument of counsel for the plaintiff that there is recurring loss to the plaintiff every month and cause of action accrues every month and the suit of the plaintiff cannot be said to have been barred by law of limitation, but as per settled law, the plaintiff is entitled to the benefit only for period of three years preceding the date of the filing of the present suit, i.e., for 36 months. Accordingly, this issue stands disposed of accordingly.”

8. Since the stand of the plaintiff-respondent that the order came to his knowledge in January, 1993 has been rejected by the Trial Court while accepting the suit and the judgment has been affirmed by First Appellate Court, it does not lie in the mouth of the respondent to raise this plea.



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9. This Court will now deal with the second argument of the plaintiff-respondent. In ***State of Punjab and others Versus Gurdev Singh and Ashok Kumar, (1991) 4 SCC 1***, Supreme Court has held that a 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. Following this judgment, in ***State of Punjab Versus Rajender Singh, 1999 SCC (L&S) 664***, Supreme Court has observed 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



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of this Court in *State of Punjab v. Gurdev Singh*, (1991) 4
SCC 1. The suit of the respondent is barred by limitation.”

11. In view of the clear enunciation of law, which is fully applicable to the facts of the present case, this Court has no hesitation in coming to the conclusion that the suit for declaration was instituted by the plaintiff-respondent after almost 17 years of the passing of the punishment order. The suit was clearly barred by limitation. It may also be noticed that though it has been recorded by the learned First Appellate Court that no argument has been addressed on the issue of limitation, but in view of the provision laid down in Section 3 of the Limitation Act, 1963 as has been noticed by the Supreme Court in *Gurdev Singh’s* case (supra), a duty is cast on the Court to take notice of the bar of the limitation while deciding the lis. The third argument of the counsel for plaintiff-respondent is bereft of merit.

12. As a result of the afore-going discussion, this Court is of the view that the judgments and decrees passed by the Courts below are based on erroneous appreciation of the legal position and they cannot be sustained.

13. Ergo, appeal is allowed. Judgments and decrees passed by the Courts below are set aside and the suit filed by the plaintiff-respondent is dismissed throughout with no order as to costs.

14. Pending application(s), if any, stands disposed of.

14.05.2024
kamal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No