

RSA-799 of 1997 (O&M)

2024:PHHC:070477



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

RSA-799 of 1997 (O&M)

Reserved on: 13.05.2024

Pronounced on: 18.05.2024

Chief Engineer (D.S.) Punjab State Electricity Board, Patiala and others
.....Appellants

Versus

Tara Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Sylvester Stephen, Advocate,
for Mr. Alok Mittal, Advocate,
for the appellants.

Ms. Ishika Jain, Advocate,
for the respondent.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 21.11.1996 passed by the Court of learned District Judge, Faridkot, whereby appeal preferred by the plaintiff-respondent against the judgment and decree dated 12.10.1993 passed by the Court of learned Senior Sub Judge, Faridkot, has been accepted and suit of the plaintiff-respondent has been decreed.

2. Parties to the *lis* are being referred to as per their status before the trial Court. Brief facts of the case are that the plaintiff filed a suit for declaration to the effect that he was working as Junior Engineer under the defendants. Vide order dated 09.02.1988 passed by



defendant No.1 two annual increments of the plaintiff were stopped with cumulative effect. The suit was filed by the plaintiff on 21.09.1991 i.e. after three years and seven months from the date of said order. Specific issue was framed "whether the suit was within limitation". The said issue was decided against the plaintiff and his suit was dismissed by the trial Court vide judgment and decree dated 12.10.1993. Aggrieved by the judgment and decree dated 12.10.1993, plaintiff preferred an appeal, which was accepted and suit of the plaintiff was decreed by the lower appellate Court vide judgment and decree dated 21.11.1996. The said judgment and decree of the lower appellate Court has been impugned by the defendants in the instant Regular Second Appeal.

3. Learned counsel for the appellants submitted that the suit filed by the plaintiff was hopelessly time-barred. He contended that the learned lower appellant Court has wrongly decreed the suit of the plaintiff by reversing the well-reasoned judgment of the trial Court. He contended that judgment and decree of the lower appellate Court being perverse is liable to be set aside.

4. *Per contra*, learned counsel for the respondent supported the judgment and decree of the lower appellate Court by contending that suit of the plaintiff was well-within limitation as he had recurring cause of action inasmuch as he had to draw salary every month. Learned counsel placed reliance upon the judgments of the Hon'ble Supreme Court in ***The State of Madhya Pradesh v. Syed Qamarali, 1967 SLR 228; Jai Chand Sawhney v. Union of India, 1969(3) SCC***



642, judgments of this Court in ***RSA-2119 of 1988 – Jai Parkash v. The State of Haryana decided on 18.03.2013*** and ***Baldev Raj Sharma v. State of Haryana, 1981(1) SLR 515***.

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

6. The present appeal was admitted on 21.07.1997. Hon'ble Supreme Court in ***State of Punjab and others v. Gurdev Singh (1991)4 SCC 1*** has held that even a void order is required to be challenged within a period of limitation. The relevant discussion is in para 4 which is extracted 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 fail 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 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)."*

7. Further, the Hon'ble Supreme Court in the case of ***State of Punjab and others v. Rajinder Singh, Conductor (1999) SCC (L&S) 664*** 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.”*

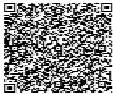
8. To the similar effect is the judgment of the Hon’ble Supreme Court in the case of **State of Punjab and another v. Balkaran Singh (2006) 12 SCC 709**.

9. A Co-ordinate Bench of this Court in **Punjab State v. Hardev Singh, 1997(2) SCT 101** while 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.

10. In the present case, order of stoppage of annual increments was passed on 09.02.1988, whereas suit for declaring the said order illegal, void and against the rules was filed on 21.09.1991 i.e. after a period of 3½ years, which is barred by limitation. Thus, the judgment and decree of the lower appellate Court is not sustainable in the eyes of law.

11. Judgments relied upon by learned counsel for the respondent are not applicable to the facts of the present case, therefore, no benefit of the same can be given to him.

12. In view of the above, appeal is allowed. The judgment and decree passed by the lower appellate Court is set aside and suit of



the respondent-plaintiff is dismissed. Decree-sheet be prepared accordingly.

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

18.05.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No