

RSA-862 of 1997

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

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Reserved on: 04.03.2024
Pronounced on: 21.03.2024

Harvinder Singh

.....Appellant

Versus

The State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - None for the appellant.

Mr. Rajesh Sehgal, Addl. A.G., Punjab.

NAMIT KUMAR, J.

1. This regular second appeal is directed against the judgment and decree dated 29.11.1996 passed by the Court of learned District Judge, Jalandhar, whereby appeal filed by the respondents/State against the judgment and decree dated 21.05.1994, passed by the Court of learned Sub Judge IInd Class, Jalandhar, has been accepted and judgment and decree dated 21.05.1994, whereby suit of plaintiff/appellant was decreed, has been set aside.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Brief facts of the case are that the plaintiff filed a suit for declaration to the effect that order No.1667-74/Steno dated 17.08.1987 and order No.10992/JR-A-4 dated 25.07.1991 passed by defendants No.3 and 2, respectively, were wrong,

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illegal, unconstitutional, arbitrary, null and void and against the principles of natural justice and not binding upon the plaintiff consequently the plaintiff was entitled to reinstatement in service with all benefits attached to the post. It was pleaded that plaintiff was working as constable in Jalandhar District. He was allotted No. 645. He was entitled to the protection under the Punjab Police Rules, 1934 and Article 311 of the Constitution of India. His services were terminated by the Senior Superintendent of Police, Jalandhar, vide order No. 1667-74/Steno 17.08.1987 without conducting any enquiry. He was not charge sheeted. He has been removed from service with an ulterior motive. The punishing authority has violated the provisions of Rule 16.19 of the Punjab Police Rules. He was acquitted vide judgment dated 02.08.1990 by Additional Judge Designated Court, District Jail, Nabha. He filed civil writ petition No.1846 of 1991, which was disposed of vide order dated 04.02.1991 with a direction to dispose of the appeal within six months. In view of the said order, the defendant No.2 had passed order bearing No.10992/ J.R.A.4 dated 25.07.1991. The appeal was dismissed on the ground of limitation. But in view of the order of this Court, the appeal was to be deemed within time. Thereafter, appellant again approached this Court by way of writ petition in the year 1992, which was dismissed as withdrawn with liberty to file a regular suit on the same cause of action. After serving notice under section 80 C.P.C. the suit was filed.

3. Upon notice, written statement was filed raising objection that the suit was barred by time. As per Rule 16.30 of Punjab Police

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Rules, the appeal was required to be preferred within one month of the date of the original order exclusive of the time taken to obtain a copy of the order. The plaintiff had links with the terrorists, desperate anti-social and anti-national elements. He had rightly been removed from service under Article 311(2)(b) of the Constitution of India. It was not reasonably practicable to hold departmental enquiry or to serve any charge sheet or show cause notice upon him. It was neither in the public nor in the interest of the Government to do so. The departmental enquiry has rightly been dispensed with.

4. Replication was filed and the parties had come to trial on the following issues :-

- “1. Whether the plaintiff is entitled to the declaration as prayed for? OPP
2. Whether the suit is time barred? OPD
3. Whether the notice under Section 80 CPC is illegal and invalid? OPD
4. Whether the plaintiff has no cause of action to file the present suit? OPD
5. Relief.”

5. The parties led their respective evidence. The Court of first instance, after appreciating evidence on record vide judgment and decree dated 21.05.1994 decreed the suit filed by the plaintiff.

6. Feeling aggrieved against the said judgment and decree of the trial Court, appellants preferred an appeal before the lower appellate Court, which has been accepted vide judgment and decree dated 29.11.1996.

7. No one has appeared on behalf of the appellants.

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8. The matter pertains to year 1997 and was admitted on 20.10.1997.

9. Learned State counsel submitted that suit filed by the plaintiff was barred by limitation. Plaintiff was indulging in anti social activities and due to this reason, the impugned order was passed without holding a departmental enquiry and provisions adhering to the Punjab Police Rules. He has produced a copy of order dated 28.04.2015 passed by the Hon'ble Supreme Court, whereby SLP (C) No.20819 of 2011; SLP (C) No.20863 of 2011 and SLP (C) No.21074 of 2011, filed by similarly situated employees were dismissed.

10. I have heard learned State counsel and perused the record.

11. The impugned order was passed by the punishing authority on 17.08.1987 (Ex.P1) whereby plaintiff was dismissed from service and it was held that it was not reasonably practicable to hold an enquiry in a manner provided under the Rules as the plaintiff was indulged in anti-social and anti-national activities. Thereafter, appellant filed CWP No.1846 of 1991, which stood disposed of on 04.02.1991, with a direction to decide the appeal within six months and further directed the appellant to file an application for condonation of delay to the competent authority by making an appropriate case for showing sufficient reason for delay. The appeal was filed which stood dismissed on 22.07.1991 on the ground of limitation. He again approached this Court by filing a writ petition in the year 1992, which was dismissed as withdrawn to file a civil suit on the same cause of action. Plaintiff filed civil suit challenging the order dated 17.08.1987

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on 05.06.1992. The suit could have been filed by the plaintiff within three years of the passing of the impugned order as required under the Limitation Act. Nothing has been placed on record to indicate that appellant was precluded in any manner for filing the civil suit within time. Therefore, the suit filed by the plaintiff was hopelessly barred by limitation.

12. In ***State of Punjab v. Gurdev Singh Ashok Kumar, 1991(5) S.L.R. 1***, it has been held as under: -

“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.”

13. The fact that the plaintiff was acquitted in the criminal case would not automatically extend the period of limitation. Since the suit of the plaintiff was barred by limitation, learned District Judge had rightly accepted the appeal filed by the State and dismissed the suit of the plaintiff. Moreover, as per Rule 16.30 of the Punjab Police Rules, an appeal could have been filed within a month from the passing of the impugned order, however, the appeal preferred by the plaintiff was also barred by limitation.

14. It is pertinent to mention here that suit of three similarly situated employees, namely, Saroop Singh; Gurdev Singh and Atma Singh has been dismissed upto the Hon’ble Supreme Court and attained finality.

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15. No question of law, muchless substantial question of law arises for consideration in the present appeal, which would warrant interference by this Court.

16. Dismissed.

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

21.03.2024
R.S. (NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No