

RSA-2754 of 1998 (O&M)

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

RSA-2754 of 1998 (O&M)

Reserved on: 09.04.2024

Pronounced on: 20.04.2024

Ram Mehar Singh

.....Appellant

Versus

The State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Gaurav Mohunta, Advocate,
Mr. Nishant Arora, Advocate, and
Mr. Chirag Kundu, Advocate,
for the appellant.

Mr. Ravi Dutt Sharma, DAG, Haryana.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 06.10.1997, passed by the Court of learned Additional District Judge, Rohtak, whereby appeal filed by the respondents-State has been accepted and judgment and decree dated 03.02.1996, passed by the Court of learned Additional Civil Judge (Senior Division), Rohtak, whereby suit of the appellant-plaintiff for declaration was decreed, has been reversed.

2. Parties to the *lis* are being referred as per their status before the trial Court. Brief facts of the case are that plaintiff filed a suit for

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declaration with consequential relief of mandatory injunction pleading therein that he was appointed as T-mate by defendants no.1 on 02.01.1978 and since then he has been performing his duty honestly, efficiently and to the satisfaction of his higher authorities. The service record of the plaintiff is good and there is no complaint against him during the service period. He is senior to defendant no.3, according to the seniority list circulated by the department. In violation to the seniority list, defendant no.2 has promoted defendant no.3 – Paras Ram, T-mate, to the post of Operator illegally on 31.07.1981 (wrongly mentioned as 01.01.1981 in the judgments of the Courts below). At the time of the promotion, defendant no.2 had not considered the name of the plaintiff and the promotion order dated 31.07.1981 is illegal, unwarranted and unconstitutional. The promotion order is not speaking and has no weight in the eyes of law. No notice was ever given to the plaintiff regarding the change in the seniority list. The plaintiff is entitled for his promotion from the post of T-mate to the post of Operator. According to the instructions of the Government the promotions should be made in accordance with the seniority list. A departmental representation was moved by the plaintiff on 09.11.1989, but the authorities have not given any reply of the same. Thereafter, a legal notice under Section 80 C.P.C. was served upon defendants no.1 and 2, but the same has not been replied to. Despite repeated requests and demands, the defendants have refused to promote the plaintiff to the post of operator. Hence, the suit.

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3. Defendants no. 1 and 2 filed a joint written statement controverting the allegations of the plaintiff and inter alia pleaded that the plaintiff has been working as T-mate since 02.01.1978 but no seniority list of such staff has been maintained in the department. No ACR is written by the officers as there is no rule or instructions from the Government. The promotion of such staff is made in accordance with the work and conduct and recommendation of the concerned officer under whom they are working. In fact, defendant no.3, Paras Ram was doing the work on Diesel Pumping Set, Electric Pumping Set from the very beginning of his service and he knew how to operate, repair and maintain them fully. The plaintiff was working on Drag-line and, therefore, defendant no.3 was promoted to the post of Pump Operator. No seniority list is maintained of the persons working as T-mate and the promotions are made purely on the basis of the recommendations of the concerned officer. The plaintiff does not fulfil the requisite qualifications and experience for the post of Operator. Objections were also raised that the plaintiff has no cause of action and locus-standi to file the present suit, the suit is barred by limitation and the civil Court has no jurisdiction to entertain the present suit.

4. Replication was also filed by the plaintiff denying the pleas raised by the defendants and reiterating his allegations.

5. From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether plaintiff is senior to defendant no.3 and has wrongly been ignored for promotion by defendant no.2 by means of order dated 1.1.81 as alleged in the plaint, If so its effect? OPP

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2. Whether plaintiff has no cause of action or locus-standi to file the suit? OPD
 3. Whether suit is barred by limitation? OPD
 4. Whether Civil Court has got no jurisdiction to try the suit? OPD
 5. Relief.
6. After considering the evidence led by both the parties, trial Court vide judgment and decree dated 03.02.1996, decreed the suit of the plaintiff. Aggrieved against the judgment and decree dated 03.02.1996, respondent-State preferred an appeal, which has been accepted by the lower Appellate Court vide judgment and decree dated 06.10.1997 and suit of the appellant-plaintiff stands dismissed.
7. Learned counsel for the appellant contended that judgment and decree of the lower Appellate Court is based on surmises and conjectures. The lower Appellate Court has wrongly reversed the well-reasoned judgment of the trial Court without application of judicious mind. He further contended that suit was within limitation as the same was filed after he came to know that his junior has been promoted. He further contended that the judgment/decreed of the lower Appellate Court being against the law and facts is liable to be set aside and suit of the plaintiff deserves to be decreed. In support of his contentions, learned counsel has placed reliance upon the judgment of this Court in ***Banwari Lal v. Haryana State Agriculture Marketing Board and others, 2016(2) S.C.T. 417.***
8. *Per contra*, learned counsel for the respondent-State supported the judgment and decree of the lower Appellate Court and

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contended that the same is legal and valid. He contended that the suit of the appellant-plaintiff was hopelessly time-barred, therefore, the same has rightly been dismissed by the lower Appellate Court.

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

10. Hon'ble Supreme Court in ***State of Punjab and others v. Gurdev Singh and Ashok Kumar, 1991(4) SCC 1*** has held that limitation to file a suit for declaration is three years. 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

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*otherwise provided for. Article 113 (corresponding to 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.”

11. Further, the Hon’ble Supreme Court in ***State of Punjab v. Rajinder Singh, 1999 SCC (L&S) 664*** while 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.”*

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

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13. 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.

14. In the present case, appellant-plaintiff challenged the order dated 31.07.1981, by way of suit for declaration, which was filed on 07.01.1991 i.e. after a period of about ten years, which is hopelessly time barred.

15. Perusal of the record shows that promotions of T-mates were being made according to their work and conduct and on the basis of recommendations made by their concerned officers. Defendant no.3 Paras Ram was working on Diesel Pumping Set, Electric Pumping Set from the very beginning of his service and had full knowledge to operate, repair and maintain them. The plaintiff was working on Drag-line and had no experience of repair and maintenance of pumping set. Moreover, appellant plaintiff has failed to prove that order dated 31.07.1981 whereby defendant No.3 was promoted, was void and arbitrary. Appellant himself has admitted that he was not working on regular basis in the year 1981 when the impugned order was passed. His services were regularised on 01.01.1987. Thus, appellant-plaintiff cannot claim promotion from the date when his services were not regularised. Lower Appellate Court has rightly observed that plaintiff did not fulfil the requisite qualifications and experience for the post of Operator, therefore, the impugned order was legal and valid. The facts and

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circumstances of the judgment in *Balwari Lal's* case (supra) relied upon
by learned counsel for the appellant are distinguishable, therefore, no
benefit of the same can be given to the appellant.

16. No question of law muchless substantial question of law
arises for consideration in the present appeal.

17. In view of the above, appeal is dismissed

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

20.04.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No