



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

RSA-71 of 2001 (O&M)
Reserved on: 31.7.2024
Pronounced on: 09.08.2024

Haryana State and others

.....Appellants

Versus

Mani Ram

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Saurabh Mohunta, DAG, Haryana,
for the appellant.

Mr. Lalit Rishi, Advocate,
for the respondent.

NAMIT KUMAR, J.

1. By way of present Regular Second Appeal appellants-defendants have assailed the judgment and decree dated 18.10.2000 of the lower appellate Court, Hisar, whereby judgment and decree dated 17.12.1999 passed by the Court of learned Additional Civil Judge (Senior Division), Hisar, has been reversed and suit of the respondent-plaintiff for declaration has been decreed.

2. Parties to the *lis* are being referred as per their status before the trial Court. Brief facts of the case are that the plaintiff filed a suit for declaration pleading therein that he is serving as Sub Inspector in the Haryana Roadways, Hisar, on regular basis against the permanent post. It was pleaded that without conducting regular enquiry as per Rules, plaintiff was awarded punishment of stoppage of two



increments with cumulative effect vide orders dated 16.10.1969 and 30.10.1970, by the General Manager, Haryana Roadways Hisar, and the same are illegal, null and void having been passed in contravention of the mandatory provisions of law, rules, principles of natural justice and without hearing the plaintiff. After hearing the learned counsel for the parties and appreciating the evidence on record, trial Court dismissed the suit of the plaintiff, vide judgment and decree dated 17.12.1999. Aggrieved against the judgment and decree of the trial Court, plaintiff preferred an appeal, which was accepted by the lower appellate Court vide judgment and decree dated 18.10.2000. Hence, the present Regular Second Appeal by the defendants.

3. Learned State counsel contended that lower appellate Court erred in law in decreeing the suit of the respondent-plaintiff as the same was hopelessly time barred. He further submitted that impugned orders were passed in the years 1969 and 1970 and suit was instituted in the year 1998 and as per settled principles of law, the suit should have been filed within the period of three years from the date of passing of impugned orders. Therefore, he has prayed for setting aside the impugned judgment and decree passed by the lower appellate Court by allowing the present appeal.

4. *Per contra*, learned counsel for the respondent supported the judgment and decree of the lower appellate Court. He contended that the orders of stoppage of two increments of the respondent were void and against the principles of natural justice as the same were passed without affording any opportunity of hearing to him and without



holding any enquiry. He further contended that there is no limitation to challenge the void orders. In support of his contentions, learned counsel placed reliance upon the judgments of this Court in ***The State of Punjab v. Parkash Singh, 1993(3) S.C.T. 394; Malkiat Singh v. State of Haryana, 2007(4) S.C.T. 801; Makhan Singh v. The State of Punjab and others, 2009(3) S.C.T. 123*** and ***State of Punjab v. Niranjana Singh, 2014(4) S.C.T. 437***.

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

6. The operation of the judgment and decree rendered by the lower appellate Court was stayed on 11.01.2001. Thereafter, the matter was admitted on 25.07.2003 and stay was ordered to continue.

7. The 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)."*

8. Further, the Hon'ble Supreme Court in the case of ***State of Punjab and others v. Rajinder Singh***, (1999) SCC (L&S) 664 making reference to the judgment in ***Gurdev Singh's*** case (supra) held as under: -

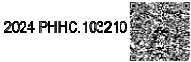


*“4. After conducting departmental enquiry, by proceedings dated 10-12-1981, two increments with cumulative effect were stopped. The suit was filed on 15-1-1988. Article 58 of the Schedule to the Limitation Act 21 of 1963 prescribes three years limitation from the date of the order, to seek a declaration 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.”*

9. 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**.

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

11. In the present case, orders of stoppage of annual increments were passed on 16.10.1969 and 30.10.1970, whereas suit for declaring the said orders null and void was filed on 23.02.1998 i.e. after a period of 28 years, which is hopelessly time barred. Thus, the



judgment and decree of the lower appellate Court is not sustainable in the eyes of law.

12. Judgments relied upon by learned counsel for the respondent are not applicable to the facts of the present case and are in teeth to the judgments passed by the Hon’ble Supreme Court, as referred above, therefore, no benefit of the same can be given to him.

13. No other point has been urged.

14. In view of the above, appeal is allowed. The judgment and decree dated 18.10.2000, passed by the lower appellate Court, Hisar, is set aside and suit of the respondent-plaintiff is dismissed. Decree-sheet be prepared accordingly.

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

09.08.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No