

RSA-2825 of 2019 (O&M)

2024:PHHC:069678



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

RSA-2825 of 2019 (O&M)

Reserved on: 07.05.2024

Pronounced on: 14.05.2024

State of Punjab and others

.....Appellants

Versus

Sh. Gurcharan Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Surya Kumar, AAG, Punjab, for the appellants.

Mr. Puneet Kumar Bansal, Advocate,

for Mr. G.L. Bajaj, Advocate, for the respondent.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 13.07.2018, passed by the Court of learned Civil Judge (Senior Division), Faridkot, whereby suit for declaration filed by the plaintiff-respondent was decreed as well as against the judgment and decree dated 31.01.2019, passed by the Court of learned Additional District Judge, Faridkot, whereby appeal preferred by the appellants-defendants against the judgment and decree dated 13.07.2018, was dismissed.

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 is entitled to get promotion from the post of Steno-typist to the post of Personal Assistant with effect from the date his junior was promoted i.e. 07.01.1997. He retired from service on attaining the age of superannuation on



30.11.2014. The suit was filed by the plaintiff on 18.01.2016 i.e. after one year and two months from the date of his retirement. Specific issue was framed "whether the suit was within limitation". The said issue was decided in favour of the plaintiff by the trial Court by observing that the cause of action arose to the plaintiff when his juniors were promoted, ignoring his claim and thereafter arose to him each and every month when he drew less salary and worked on lower post, being recurring cause of action. The suit was decreed by the learned trial Court vide judgment and decree dated 13.07.2018. The defendants-State of Punjab preferred an appeal before the learned appellate Court, which has been dismissed by the learned Additional District Judge, vide judgment and decree dated 31.01.2019. The said judgments and decree have been impugned by the defendants-State in the instant Regular Second Appeal.

3. Learned State counsel submitted that the suit filed by the plaintiff was hopelessly time-barred and, therefore, the same was liable to be dismissed. He has placed reliance upon the judgments in ***State of Punjab and others v. Gurdev Singh (1991)4 SCC 1***; ***State of Punjab and others v. Rajinder Singh, Conductor (1999) SCC (L&S) 664*** and ***State of Punjab and another v. Balkaran Singh (2006) 12 SCC 709***. The impugned judgments and decree passed by the Courts below are against the law and facts on record.

4. On the other hand, learned counsel representing the respondent has supported the findings recorded by the Courts below and submitted that since plaintiff was getting less pay on monthly basis



and drawing less salary as he was wrongly ignored for promotion, therefore, the suit was not barred by limitation as recurring cause of action arose to him.

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

6 In the present case, notice of motion was issued on 01.07.2019 and operation of the impugned judgments and decree was stayed. The sole issue which arises for consideration before this Court is as to whether suit instituted by the plaintiff-respondent in the year 2016 was within limitation or not.

7. Hon'ble Supreme Court in **Gurdev Singh's** case (supra) 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 **Rajinder Singh** (supra) 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 **Balkaran Singh** (supra).

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

11. In the present case, order of promotion of alleged juniors of the respondent-plaintiff was issued on 07.01.1997, whereas suit for declaration to the effect that he is entitled to get promotion from the posts of Steno-typist to the post of Personal Assistant w.e.f. the date of his junior was promoted i.e. on 07.01.1997, was filed on 18.01.2016 i.e. after a period of nineteen years and after a period of one year and two months from the date of his retirement, which is hopelessly time barred. Thus, the judgments and decrees of the Courts below are not sustainable in the eyes of law.



- 12. No other point has been urged.
- 13. In view of the above, the appeal is allowed. The judgments and decree passed by the Courts below are set aside and suit of the respondent-plaintiff is dismissed. Decree-sheet be prepared accordingly.
- 14. Pending application(s), if any, stand disposed of accordingly.

14.05.2024
R.S.

(NAMIT KUMAR)
JUDGE

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