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

(107)

RSA-2864-2019 (O&M)
Date of decision:- 12.11.2024

STATE OF HARYANA AND OTHERS

... APPELLANTS

VERSUS

MOHINDER SINGH

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Sharad Aggarwal, DAG, Haryana
for the appellants.

Mr. Sandeep Goyal, Advocate
for the respondent.

SUVIR SEHGAL, J. (ORAL)**CM-7919-C-2019**

1. For the reasons given therein, application is allowed.
2. Delay of 35 days in the filing of the appeal is condoned.

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3. Appellant-defendants are in second appeal before this Court challenging the judgment and decree dated 23.01.2019 was passed by the Lower Appellate Court.
4. Pleaded case of the respondent-plaintiff, who was working as a Constable, is that disciplinary proceedings were initiated against him on the allegation that on 20.01.1994, he was deputed to escort an under-trial from the Ambala Central Jail to the Court of ACJM, Hisar and to bring him back

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to the jail premises. When the under-trial was being brought back to Ambala, HC Jaswinder Singh, who was Incharge of the police team, permitted his subordinate-plaintiff and Prem Kumar to leave for his home midway. After Court appearance, undertrial was kept at Police Station, Kaithal and on the next day, when plaintiff and Prem Kumar did not turn up, another Constable accompanied the HC Jaswinder Singh with the under-trial to the Central Jail premises. On the basis of the finding recorded in the departmental enquiry, plaintiff and his colleagues were dismissed from service vide order dated 26.10.1994. Plaintiff filed a departmental appeal, which was accepted by the Deputy Inspector General of Police, Hisar Range and the punishment was reduced to stoppage of five annual increments with permanent effect vide order dated 08.03.1995. Challenging this order, plaintiff filed a suit for declaration and mandatory injunction. Upon being served, defendants filed a written statement taking preliminary objections and justified that a departmental inquiry was conducted in accordance with Rule 16.24 of the Punjab Police Rules, 1934 and all the three police officials were found to be guilty. After serving them with a show cause notice and providing them with an opportunity of hearing, the punishment order was passed. An objection has been taken that the plaintiff has filed the suit after more than 20 years of the accrual of the cause of action. Plaintiff did not file any replication to the written statement and on the basis of the pleadings of the parties, Trial Court framed issues. After the parties led the evidence and they were heard, Trial Court dismissed the suit by judgment and decree dated 27.10.2016. Appeal, preferred by the

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plaintiff, was accepted by the learned Additional District Judge, Sirsa and the judgment and decree passed by the Trial Court was reversed. A decree was passed to the effect that the penal order is illegal and relief of mandatory injunction was granted to the plaintiff. Defendants are before this Court in the above background.

5. State counsel has argued that the respondent-plaintiff had filed a suit for declaration after almost twenty years of the passing of the punishment order and it was clearly barred by time. He submits that the Lower Appellate Court erred in reversing the well considered finding of the Trial Court on the issue of limitation.

6. Per contra, counsel for the respondent has placed reliance upon the judgment of this Court in **Malkiat Singh Versus State of Haryana, 2007 (4) SCT 801** to contend that the plaintiff had a recurring cause of action as by the penal order, increments payable to the plaintiff were stopped with cumulative effect.

7. I have considered the submissions made by counsel for the parties and examined the record with their able assistance.

8. In **State of Punjab and others Versus Gurdev Singh and Ashok Kumar, (1991) 4 SCC 1**, Supreme Court has held that a 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 and if the statutory time limit has expired, the Court cannot give the declaration sought for.



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9. Following this judgment, in **State of Punjab and others Versus Rajinder Singh, 1999 SCC (L&S) 664**, Supreme Court observed 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.”

10. Coming to the facts of the present appeal, there is no dispute that the appellate authority while modifying the punishment order directed that five annual increments payable to the plaintiff be stopped with permanent effect. This order was passed on 08.03.2015. Plaintiff filed a suit for declaration challenging the order on 11.12.1995. The suit has been instituted by him after two decades of the passing of the order. Limitation for filing a suit for declaration under Article 58 of the Limitation Act, 1963 is three years. The suit is, therefore, clearly barred by limitation. In view of



the clear position of law settled by the Supreme Court, which has has been reproduced herein above, the judgment of this Court in **Malkiat Singh’s case (supra)** relied upon by the counsel for the respondent is not attracted. Findings to the contrary recorded by the learned Lower Appellate Court cannot be sustained and are liable to be set aside.

11. For the afore-going reasons, the judgment and decree passed by the learned Additional District Judge, Sirsa is set aside and that of the Trial Court is restored. Suit filed by the respondent-plaintiff is dismissed throughout with no order as to costs.

12. Pending application, if any, stands disposed of.

(SUVIR SEHGAL)
JUDGE

12.11.2024
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No