



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-18269-2021 (O&M)

Decided on :21.05.2024

PRITAM

. .Petitioner

Versus

STATE OF HARYANA AND ORS

. . . Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Sunil Kumar Pandey, Advocate for
Mr. Bhupinder Ghanghas, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

HARSIMRAN SINGH SETHI , J. (Oral)

1. In the present petition, the challenge is to the order dated 24.05.2000 (Annexure P-3) by which, the claim of the petitioner for the grant of compassionate appointment has been rejected by the respondents as well as further prayer of the petitioner is for the grant of benefit of ex-gratia amount as admissible to the petitioner keeping in view the policy prevalent at the time of death of the father of the petitioner.

2. It may be noticed that the father of the petitioner, namely, Shri Niwas, was working as a Canal Petrol (Baildar) in the Haryana Irrigation Department and died during the service on 16.07.1998. At the time of the death of the father of the petitioner, the petitioner was minor and the mother of the petitioner submitted an application dated 21.09.1999 (Annexure P-1) in the office of respondents-department that one post on compassionate ground be reserved for the petitioner to be given to the petitioner when he attains the age of majority. The said claim of the mother of the petitioner was rejected by the respondents-department on 24.05.2000 (Annexure P-3) against which, the petitioner did not raise any grievance for a period of 21



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years. The said order of rejecting the claim of the petitioner dated 24.05.2000 (Annexure P-3) has now been challenged by the petitioner in the present petition which is filed in the year 2021. The further prayer of the petitioner is that in case, the compassionate appointment is not admissible to the petitioner then ex-gratia financial assistance be released to him as admissible under the policy which was prevalent at the time of death of the father of the petitioner.

3. Upon notice of motion, the respondents have filed their reply. In the reply they have mentioned that the claim of the petitioner was rejected vide order dated 24.05.2000 (Annexure P-3) and the same is not maintainable now i.e. after a period of 21 years as, the compassionate appointment is only to be extended to mitigate the financial hardship of the family of the deceased employee and it cannot be said that the financial hardship continued even after the period of 21 years. With regard to grant the benefit of financial assistance to the petitioner, the respondents have stated that the said claim of the petitioner for the grant of financial assistance becomes time barred.

4. I have heard learned counsel for the parties and have gone through the record with their able assistance.

5. The challenge to the order passed in the year 2000 cannot be entertained in the year 2021 i.e. after a period of 21 years. In case, the petitioner or his mother were not satisfied with regard to the non-grant of the compassionate appointment to the petitioner, the said order rejecting the claim of the mother of the petitioner dated 24.05.2000 (Annexure P-3) should have been challenged by them immediately.

6. Even otherwise, as per the settled principle of law settled by the Hon'ble Supreme Court of India in **Civil Appeal No.1852 of 1989 titled as**



State of Punjab and others vs. Gurdev Singh and Ashok Kumar, decided on 21.08.1991, that every order passed in case, causes prejudice, has to be challenged within a period of three years. The relevant paragraphs of the said judgment are 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 residu- ary 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 insti- tuted (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. It will be clear from these principles, the party ag- grieved 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. The Allahabad High Court in Jagdish Prasad Mathur and Ors. v. United Provinces Government, AIR 1956 All



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114 has taken the view that a suit for declaration by a dismissed employee on the ground that his dismissal is void, is governed by Article 120 of the Limitation Act. A similar view has been taken by Oudh Chief Court in Abdul Vakil v. Secretary of State and Anr., AIR 1943 Oudh 368. That in our opinion is the correct view to be taken. A suit for declaration that an order of dismissal or termination from service passed against the plaintiff is wrongful, illegal or ultra vires is governed by Article 113 of the Limitation Act. The decision to the contrary taken by the Punjab & Haryana High Court in these and other cases ((i) State of Punjab v. Ajit Singh, [1988] 1 SLR 96 and (ii) State of Punjab v. Ram Singh, [1986] 2 SLR 379 is not correct and stands overruled.”

7. In the present case, the petitioner has challenged the order dated 24.05.2000 (Annexure P-3) rejecting the claim of mother of the petitioner for the grant of compassionate appointment to him (petitioner) in the year 2021 i.e. after a period of 21 years, hence, keeping in view the judgment passed in **Gurdev Singh’ s case (Supra)**, the said claim becomes time barred, hence, the same cannot be accepted.

8. **Qua the further claim of the petitioner for the grant of financial assistance, the said benefit has to be allowed.** Once, under the policy which was in existence at the time of the death of the father of the petitioner, the petitioner was entitled for the grant of benefit of financial assistance, hence, what ever the financial assistance was to be made available to the legal heirs of the deceased employee in the year 1998, the same should have been extended to the mother of the petitioner. Hence, in



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case, the ex-gratia financial assistance, not already paid to the family of the deceased employee, namely, Shri Niwas, the said benefit of financial assistance be released in the favour of the mother of the petitioner be within the period of eight weeks from the date of receipt of certified copy of this order. The financial assistance will be calculated in view of the policy which was operational in the year 1998 at the time of the death of the father of the petitioner.

9. The present petition stands disposed of in view of above terms.
10. Pending civil miscellaneous application, if any, stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

21.05.2024

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