



RSA-2171-2022 (O&M)

-1-

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

(238)

RSA-2171-2022 (O&M)

Date of decision:- 21.10.2024

ASHOK KUMAR

... APPELLANT

VERSUS

STATE OF HARYANA AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Alakh Bhatt, Advocate for
Mr. Sandeep Singal, Advocate
for the appellant.

Mr. Aman Bahri, Addl. A.G., Haryana

SUVIR SEHGAL, J. (ORAL)**CM-7423-C-2022**

1. For the reasons given in the application, it is allowed.
2. Delay of 69 days in the re-filing of the appeal is condoned.

CM-7424-C-2022

3. Exemption, as prayed for, is granted.
4. Application is allowed.

RSA-2171-2022

5. Appellant-plaintiff is in second appeal before this Court challenging the judgments and decrees passed by the Courts below, whereby the suit for declaration and mandatory injunction filed by him has been dismissed.

**RSA-2171-2022 (O&M)****-2-**

6. Factual position leading to the filing of the appeal is that plaintiff was working as a Conductor with the defendants and was promoted to the post of Sub Inspector. During his service tenure, he was served with some charge sheets on various allegations, which were contested by him. Defendant No.3 passed orders dated 26.09.1994, 04.09.1994, 20.11.1995, 28.11.1995, 05.03.1997 and 09.08.2001 imposing punishments, whereby some increments were withheld. Pleading that he had not been given any opportunity of being heard before the passing of the penal orders, plaintiff filed the suit for declaration and mandatory injunction. Upon being served, suit was contested by the defendants by filing a joint written statement, wherein various preliminary objections were raised. It was submitted that the plaintiff had embezzled government money by not depositing the bus ticket fare and his service record was un-satisfactory. He was awarded punishments for acts of omission and commission. Plaintiff filed a replication to the written statement filed by the defendants by re-iterating his stand. Trial Court framed issues on the basis of the pleadings of the parties, who led evidence in support of their respective case. After the parties were heard, by judgment and decree dated 29.07.2019, Trial Court dismissed the suit. Plaintiff remained unsuccessful before the First Appellate Court and his appeal was dismissed by the learned District Judge, Rohtak by judgment dated 20.03.2020 resulting in the institution of the present appeal.

7. Counsel for the appellant has argued that both the Courts have erred in dismissing the suit as being barred by time, even though no issue

**RSA-2171-2022 (O&M)****-3-**

was framed on the question of limitation. By referring to the testimony of Virender Kumar, DW-2, Clerk, he contends that the record of the disciplinary proceedings was not available with the defendants, who have failed to establish that due procedure was adopted before passing the punishment orders.

8. *Per contra*, learned State counsel has opposed the appeal and has urged that under Section 3 of the Limitation Act, 1963, it is obligatory for the Court to examine as to whether the suit is within time. He submits that the suit for declaration filed by the appellant-plaintiff is beyond the prescribed period of three years and has been rightly dismissed by both the Courts below.

9. I have considered the arguments addressed by counsel for the parties as well as examined the paper-book of the appeal.

10. The arguments of counsel for the appellant deserve to be noticed and are rejected. The law is well settled. In **V.M. Salgaocar and Bros. Versus Board of Trustees of Port of Mormugao and another (2005) 4 SCC 613**, Supreme Court has held as follows:-

“20. The mandate of Section 3 of the Limitation Act is that it is the duty of the court to dismiss any suit instituted after the prescribed period of limitation irrespective of the fact that limitation has not been set up as a defence. If a suit is ex facie barred by the law of limitation, a court has no choice but to dismiss the same even if the defendant intentionally has not raised the plea of limitation.

21. This Court in **Manindra Land & Building Corpn. Ltd. v. Bhutnath Banerjee [(1964) 3 SCR 495 :**



AIR 1964 SC 1336] held (AIR para 9):-

“Section 3 of the Limitation Act enjoins a court to dismiss any suit instituted, appeal preferred and application made, after the period of limitation prescribed therefor by Schedule I irrespective of the fact whether the opponent had set up the plea of limitation or not. It is the duty of the court not to proceed with the application if it is made beyond the period of limitation prescribed. The Court had no choice and if in construing the necessary provision of the Limitation Act or in determining which provision of the Limitation Act applies, the subordinate court comes to an erroneous decision, it is open to the court in revision to interfere with that conclusion as that conclusion led the court to assume or not to assume the jurisdiction to proceed with the determination of that matter.”

11. Section 3 of the Limitation Act, 1963, casts a duty on the Court to dismiss a suit if it is barred by time, even if limitation has not been set up as a defence. The argument of counsel for the appellant does not hold water.

12. This Court will now deal with the second argument of the appellant-plaintiff. 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.

13. Following this judgment, in **State of Punjab and others Versus Rajinder Singh, 1999 SCC (L&S) 664**, Supreme Court observed as under:-



RSA-2171-2022 (O&M)

-5-

“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.”

14. Adverting to the admitted facts of the present case, appellant-plaintiff was imposed with punishments vide penal orders passed between the year 1994 to the year 2001. He has challenged all these orders by filing a suit for declaration, which was instituted by him on 26.04.2017. The suit was instituted by him after more than 15 years of passing of the last punishment orders. The suit is clearly barred by limitation as it has been filed beyond the period of three years of passing of the last punishment order dated 09.08.2001. In view of the clear enunciation of law by the Supreme Court, as has been noticed above, the judgment of this Court in **Malkiat Singh**



RSA-2171-2022 (O&M) -6-

Versus State of Haryana, 2007 (4) SCT 801, relied upon by counsel for the appellant would not be attracted to the facts of the present case. This Court does not find any infirmity or illegality in the judgments passed by the Courts below, which are upheld.

15. As a consequence of the above discussion, the appeal being bereft of merit is dismissed with no order as to cost.

(SUVIR SEHGAL)
JUDGE

21.10.2024
Kamal

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