

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(202)

RSA No. 4057 of 2019 (O&M)
Date of Decision : 08.04.2024

State of Haryana and others

...Appellants

Versus

Kimti Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Vibha Tewari, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

1. In the present appeal, the challenge is to the judgment and decree of the lower appellate court dated 28.05.2019 by which the judgment and decree of the trial court vide order dated 27.11.2017 has been set-aside and the suit filed by the respondent-plaintiff has been allowed.

2. Learned counsel for the appellants-defendants argues that vide order dated 31.01.1999, two annual increments of the respondent-plaintiff was stopped with cumulative effect and he only challenged the same by filing an appeal on 02.12.2016 i.e. after a period of 17 years 09 months, which was dismissed vide order dated 13.02.2017, hence, the challenge to the order of punishment in the civil suit, which was filed in the year 2017, is beyond the period of limitation though, the said order was dismissed by the trial court vide order dated 27.11.2017 but the suit

filed by the respondent-plaintiff has been allowed by the lower appellate court.

3. Learned counsel for the appellants-defendants submits that while allowing the suit, the lower appellate court has recorded finding in paragraph-16 that as the punishment of stoppage of two annual increments with cumulative effect is a case of recurring loss and cause of action, the same is within the period of limitation. Learned counsel for the appellants-defendants further submits that the judgment and decree of the lower appellate court are contrary to the settled principle of law settled by the Hon'ble Supreme Court of India in Civil Appeal No. 10269 of 1995 titled as ***Punjab State Vs. Darshan Kumar***, decided on 02.11.1995 as well as in SLP(C) No. 2944 of 1994 titled as ***State of Punjab Vs. Rajinder Singh***, decided on 25.03.1996.

4. Despite service, no one has appeared on behalf of the respondent-plaintiff.

5. I have heard learned counsel for the appellants-defendants and have gone through the record with her able assistance.

6. From the facts mentioned here-in-before, the challenge in the suit raised by the respondent-plaintiff was to the order passed by defendant No. 3 on 31.01.1999 imposing punishment of stoppage of two increments with cumulative effect as well as in the appeal dated 13.02.2017. The appeal was preferred by the respondent-plaintiff in the year 2016 much after the delay as, under the rules governing the service, the appeal can only be preferred within a period of 45 days, which

remedy was never availed by the respondent-plaintiff within the limitation and service appeal was dismissed as time barred. The suit was dismissed by the trial court vide order dated 27.11.2017 on the ground of limitation but the appeal has been allowed by holding that the stoppage of two increments with cumulative effect is a recurring cause of action, hence, the suit was maintainable. The said view of the lower appellate court is contrary to the decision in ***Darshan Kumar's case (supra)*** as well as in ***Rajinder Singh's case (supra)***, wherein, the Hon'ble Supreme Court of India has held that keeping in view the judgment in Civil Appeal No. 1852 of 1989 with Civil Appeal No. 4772 of 1989 titled as ***State of Punjab and others Vs. Gurdev Singh and Ashok Kumar***, decided on 21.08.1991, even a void order is liable to be challenged within a period of three years.

7. The relevant paragraph 4 of the judgment in ***Rajinder Singh's case (supra)*** is 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.”

8. In the present case, the order dated 31.01.1999 has been challenged by the respondent-plaintiff after a period of 17 years 09 months by filing a civil suit, hence, it cannot be said that the challenge to the said order is maintainable as in the year 2017. Even the service appeal was filed after expiry of limitation of 45 days and the same was dismissed as time barred, rejection of which was challenged and even the dismissal of appeal on 13.02.2017, will not give the jurisdiction to challenge the order dated 31.01.1999.

9. Keeping in view the above, the judgment of the lower appellate court vide order dated 28.05.2019 is perverse to the settled principle of law noticed here-in-before and hence, cannot be sustained. The judgment and decree of the lower appellate court vide order dated 28.05.2019 is accordingly set-aside and that of trial court is restored and the suit filed by the respondent-plaintiff is dismissed.

10. Present regular second appeal is allowed.

Any miscellaneous application, if pending, stands disposed of.

April 8th, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No