

205 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2315-2014 (O&M)
Date of decision-27.02.2024

Hari Ram

...Appellant

Vs.

Punjab State Power Corporation Ltd. Patiala and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Harish Bhardwaj, Advocate
for the appellant.

Ms. Meena Bansal, Advocate,
for the respondents.

HARSIMRAN SINGH SETHI, J. (ORAL)

CM-7185-C-2016

The present application has been filed for recalling the order dated 29.10.2015.

Keeping in view the facts mentioned in the application, which are duly supported by an affidavit, the order dated 29.10.2015, dismissing the appeal for non-prosecution, is recalled and the appeal is restored to its original number and status.

On the joint request of learned counsel for the parties, the main appeal is taken up for consideration.

RSA-2315-2014

1 In the present appeal, the challenge is to the judgment and decree of the Courts below by which, the suit filed by the appellant was dismissed by the trial Court on 19.03.2013 and even the appeal preferred by

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the appellant-plaintiff was rejected by the Lower Appellate Court on 10.12.2013.

2 Learned counsel for the appellant argued that in the suit filed by the appellant-plaintiff, the prayer was to declare the order dated 9.7.1998 as illegal, ultra viral, malafide and unconstitutional having been passed against the rules of natural justice. Learned counsel submits that the Courts below had come to the conclusion that the suit was time barred. Though, as per the appellant-plaintiff, the said findings are incorrect as, the claim of the appellant comes under the definition of “recurring cause”.

3 Learned counsel for the respondents on the other hand submits that once a specific order was passed, which was challenged, the same was required to be challenged within the limitation provided and concededly, the suit was filed beyond the limitation, which at the judgments of the courts below declaring the suit as not maintainable, is perfectly valid and legal and liable to be competent.

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

5 The only argument which has been raised by the learned counsel for the appellant is that keeping in view the fact that the order dated 9.7.1998 was affecting the rights of the appellant even in the year 2005, hence, the suit was within limitation by keeping in view the fact that the appellant was facing recurring cause of action qua the impugned order dated 09.07.1998.

6 The said argument is to be noticed in view of the fact that the impugned order dated 09.07.1998 was passed after holding a disciplinary proceedings against the appellant and by impugned order, the appellant-

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plaintiff was punished by imposing punishment of forfeiture of five increments.

7 Once, a specific order dated 09.07.1998 has been passed, the same was liable to be challenged within a period of limitation, which is 3 years from the date of passing of the said order. Concededly, the suit was filed in the year 2005, much beyond the limitation. Therefore, the findings recorded by the Courts below that the suit was beyond limitation, needs no interference by this Court.

8 The arguments that the impugned order gave a recurring cause of action to the appellant-plaintiff, has rightly not been accepted by the Courts below. Once, an order has been passed imposing a punishment, effect of the punishment continues during the service career or even after retirement, cannot be treated as a recurring cause of action. The recurring cause of action will only be raised when a relief is being claimed and there is no denial of the relief by any authority. In the present case, the impugned order of punishment was passed by the authority on 09.07.1998 and in case the appellant-plaintiff was aggrieved against the same, he should have challenged within a period of three years of the passing of the said order.

9 Even otherwise, as per the settled principles of law settled by the Hon'ble Supreme Court of India in ***State of Punjab and others Vs. Gurdev Singh, decided on 21.08.1991, 1991(3) S.C.T. 91***, even the void orders are liable to be challenged within a period of limitation. The relevant paragraphs No.4 and 8 of the 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

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*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(I) defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 2(I) 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 fall 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 of 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 : **Mt. Bole v. Mt. Koklam, AIR 1930 Privy Council 270 and Gannon Dunkerley and Co. v. Union of India, AIR 1970 Supreme Court 1433.***

8. It will be clear from these principles, the 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

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binding upon. 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.”

10 Keeping in view the above, as learned counsel for the appellant has not been able to show any perversity in the findings recorded by the Courts below, no interference is called for by this Court and the same is accordingly dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

27.02.2024
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No