



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(209)

RSA No. 2964 of 2014 (O&M)

Date of Decision : 28.05.2024

State of Haryana and others

...Appellants

Versus

Banwari Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Vibha Tewari, Assistant Advocate General, Haryana
for the appellants.

Mr. Aditya Yadav, Advocate for the respondent.

Harsimran Singh Sethi J. (Oral)

1. In the present appeal, the challenge is to the judgment and decree of the lower appellate court dated 28.02.2014 by which the judgment and decree of the trial court dated 31.05.2012 has been set-aside and the suit filed by the respondent-plaintiff has been allowed qua the revised pay scale from 01.01.1996 along with arrears and interest as well and the recovery done from the respondent-plaintiff from his pensionary benefits has been held to be bad.

2. Learned counsel for the appellants-defendants argues that the lower appellate court without appreciating the correct facts has allowed the appeal filed by the respondent-plaintiff so as to set-aside the well reasoned judgment of the trial court. Learned counsel for the appellants-defendants submits that the lower appellate court failed to consider that



the suit, which was filed in the year 2009, was not at all maintainable seeking revised pay scale from 01.01.1996.

3. Learned counsel for the appellants-defendants further submits that with regard to the setting aside of the recovery, no order directing the recovery was challenged and the lower appellate court allowed the relief, on presumption that if any order has been passed or not, conveyed to the respondent-plaintiff or not, by which the recovery has been done, has set-aside the recovery from the respondent-plaintiff. Learned counsel for the appellants-defendants submits that the judgment and decree of the lower appellate court is perverse and is liable to be set-aside as the suit qua the relief claimed was time barred.

4. Learned counsel for the respondent-plaintiff, on the other hand, submits that the relief for which the respondent-plaintiff was entitled for has been granted by the lower appellate court by correctly appreciating the facts and the evidence, which has come on record and, hence, the same is liable to be upheld and the appeal filed by the appellants-defendants is liable to be dismissed.

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

6. The first question which arises is whether with regard to the claim of the respondent-plaintiff seeking the revision of pay from 01.01.1996 by filing the civil suit in the year 2009 is maintainable or not. The said question has already been decided by the Hon'ble Supreme Court of India in ***State of Punjab and others Vs. Balkaran Singh***, 2006



(12) SCC 709. Hon'ble Supreme Court of India after examining various judgments, held that the limitation starts to run from the date, right to sue accrued qua the grant of a pay scale and the claim has to be raised within a period of limitation from the date right to accrued arose. The relevant paragraph of the said judgment is as under :-

“15. We shall first deal with the first two suits relating to the declaration that the plaintiffs therein are entitled to be placed in the revised scale of pay of Rs.1200-1850/-. The suits filed are for declaration that the order or endorsement dated 13.3.1980 was illegal and void. The suits were filed more than 12 years after the order fixing the revised scale of pay at Rs.940-1850/-. A suit for declaration is governed by [Article 58](#) of the [Limitation Act](#) and the period is three years and the terminus au quo is "when the right to sue first accrues".(emphasis supplied) Clearly, the right to seek the relief of declaration that they are entitled to revised scale of pay of Rs.1200-1850/-, accrued to the plaintiffs on 13.3.1980, when the endorsement in that behalf was made by the Director of Agricultural Services and the plaintiffs were denied revised pay at Rs.1200-1850/- and were paid only at Rs.940-1850/-. It was not the mere making of an order, but an action that had immediate impact on the right of the plaintiffs to recover a higher salary as per their claim. The cause of action thus clearly arose for the first time. Thus the suit for declaration was clearly barred by limitation going by [Article 58](#) of the [Limitation Act](#). The fact that some other officer had been given a decree for the enhanced revised scale, does not furnish the plaintiffs in the first two suits with a fresh cause of action. It is well settled that the time does not stop to run once it has started to run. Therefore, the reliance placed on



the decree in Civil Suit No. 461 of 1991 had absolutely no relevance on this question. Strictly speaking, Civil Suit No. 461 of 1991 also ought not to have been decreed since that suit was clearly barred by limitation, since the order sought to be challenged in that suit of 1991 was also the order dated 13.3.1980. But in view of the decree passed therein, it is not for us now to go into the correctness or otherwise of the decision rendered therein. Suffice it to say that the said decision cannot give the plaintiffs a fresh cause of action. The time started to run when the right to sue first accrued to the plaintiff and that first accrual was clearly on 13.3.1980 and on expiry of 3 years therefrom, the suit for declaration became barred.”

7. In the present case, the respondent-plaintiff is claiming the benefit of revised pay scale from 01.01.1996. The right to sue accrued in favour of the respondent-plaintiff on 01.01.1996 hence, he could have challenged the non-grant of the pay scale within a period of three years from the said date whereas, the suit was filed after a period of 13 years of the right accrued, which suit cannot be accepted as to be within limitation keeping in view the judgment of the Hon’ble Supreme Court of India in ***Balkaran Singh (supra)***.

8. With regard to the second benefit, which has been granted by the lower appellate court in favour of the respondent-plaintiff in setting-aside the recovery, which has been done from the pensionary benefits of the respondent-plaintiff, it may be noticed that the respondent-plaintiff retired in the year 1996. It is a conceded position that recovery in question was also done from him in the said year itself. Without there



being any challenge to an order by which the recovery was done, recovery has been set-aside by the lower appellate court that too with regard to a suit, which was filed 13 years after the recovery.

9. Firstly, while passing the judgment, the lower appellate court failed to consider the question of limitation qua the relief being claimed and granted in favour of the respondent-plaintiff. Further, the lower appellate court also failed to the notice whether, any order was passed for affecting the said recovery or not and whether the said order was under challenge or not. Without appreciating all these facts, the relief has been granted, which judgment of the lower appellate court has to be treated as a perverse to the facts and evidence, which have come on record.

10. Keeping in view the above, the judgment and decree of the lower appellate court dated 28.02.2014 is perverse to the evidence and facts, which have brought on record and cannot be sustained and is accordingly set-aside. The appeal filed by the appellants-defendants is allowed and the judgment and decree of the trial court is brought in operation.

11. Accordingly, the present regular second appeal is allowed.
Pending miscellaneous application, if any, also stands disposed of.

May 28, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No