

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

(219)

RSA-3108-2014

Date of Decision : April 02nd 2024**Durga Devi and others****.. Appellants****Versus****Additional Director Agriculture and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Karan Singh, Advocate, for the appellants.

Mr. Sandeep Singh Mann, Addl. A.G., 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 16.02.2013 by which, the judgment and decree of the trial Court dated 24.01.2011 has been set aside and the suit filed by the appellant-plaintiff has been dismissed by recording a finding that the suit filed by the appellant-plaintiff was not within the period of limitation.

2. Certain facts may be noticed for the correct appreciation of the issue in hand.

3. The husband of appellant No.1 namely Durga Devi i.e. Sajjan Kumar was working as a Watchman in the office of the Assistant Agriculture Engineering, Hisar. There was an allegation of theft against the said Sajjan Kumar for which an FIR No.260 dated 11.05.1995 was

registered. For the misconduct, the departmental proceedings were also initiated against him. In the departmental proceedings, the allegations of misconduct were proved and ultimately, the services of the husband of appellant No.1 namely Sajjan Kumar, were terminated on 01.05.2001. In FIR No.260 dated 11.05.1995, the husband of appellant No.1 was acquitted. Thereafter, unfortunately, the husband of appellant No.1 died on 04.09.2001.

4. The civil suit was filed by appellant No.1-plaintiff on 25.08.2009 challenging the order of termination of the services of the late husband of appellant No.1 dated 01.05.2001. The said suit was allowed by the trial Court vide judgment and decree dated 24.01.2011 on the basis of the facts and evidence which had come on record. The said judgment and decree was challenged by the respondents-defendants by filing an appeal, which came to be decided on 16.02.2013. The appeal was allowed by the lower Appellate Court on the ground that the suit was time barred, which judgment and decree of the lower Appellate Court dated 16.02.2013 is impugned in the present Regular Second Appeal.

5. Learned counsel for the appellants argues that once the husband of appellant No.1 was acquitted in June 2001, the order terminating the services of the husband of appellant No.1 dated 01.05.2001 is liable to be set aside. Learned counsel for the appellants submits that as the appellant No. 3 was minor, they could not file the civil suit hence, the filing of the civil suit in the year 2009 was within the period of limitation keeping in view the attainment of age of majority qua the appellant No.3.

6. Learned State counsel, on the other hand, submits that once an order of dismissal was passed after holding an enquiry, even if subsequently the husband of appellant No.1 was acquitted, the same will have no impact

upon the order of termination of service which was passed on the basis of the disciplinary proceedings. Learned State counsel further submits that as the appellant No.1 having complete jurisdiction to challenge the order dated 01.05.2001 within limitation, merely that appellant No.3 was minor, is no ground to extend the period of limitation and the judgment of the lower Appellate Court dismissing the suit on the ground of limitation is perfectly valid and legal.

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

8. It is a settled principle of law that the challenge to an order is to be made within the limitation period prescribed under the Limitation Act.

9. Learned counsel for the appellants concedes the fact that the limitation period to challenge the order dated 01.05.2001 is three years.

10. That being so, the order dated 01.05.2001 should have been challenged within a period of three years. Concededly, the suit was filed in the year 2009 hence, it cannot be said that the suit was within the period of limitation.

11. Even otherwise, as per the judgment of the Hon'ble Supreme Court of India 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***, it has been held that even the void order can only be challenged within a period of three years of limitation. The relevant paragraph of the said judgment is 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 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 11 3, 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.)"

12. The argument that appellant No.3 was minor, will not come to the rescue of the appellant No.1 as other two appellants were competent to challenge the order dated 01.05.2001 within the limitation period prescribed

hence, the judgment and decree of the lower Appellate Court dismissing the suit needs no interference.

13. Keeping in view the above, as no perversity could be pointed out by the learned counsel for the appellants qua the judgment and decree of the lower Appellate Court dated 16.02.2013, no ground is made out for any interference by this Court.

14. Learned counsel for the appellants submits that the grant of pensionary benefits have no limitation being recurring cause of action hence, the civil suit filed in the year 2009 is perfectly within the period of limitation.

15. It may be noticed that it is not a simple case of grant of pensionary benefits. A dismissed employee does not get pensionary benefits hence, as the husband of appellant No.1 was dismissed from service in the year 2001, till the said order is set aside, no pensionary benefits can be extended to the appellants hence, the claim of appellant No.1 that the suit is within limitation qua the claim of pension cannot be accepted and has rightly been rejected by the lower Appellate Court.

16. No ground is made out for any interference by this Court in the present appeal.

17. Dismissed.

April 02nd, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes