

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

211

RSA-554-2017 (O&M)
Date of Decision :25.04.2024

Balwant Singh

...Appellant

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ajay Pal Singh Rehan, Advocate for the appellant.

Mr. Rohit Ahuja, DAG, Punjab.

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Harsimran Singh Sethi, J. (Oral)

1. In the present appeal, challenge is to judgment and decree dated 30.08.2014 passed by the trial Court, by which suit filed by the appellant-plaintiff challenging the order dated 21.05.2004 was dismissed on the ground that the same was time barred as well as judgment and decree dated 16.02.2016 passed by the lower Appellate Court by which, judgment and decree of the trial Court has been upheld.

2. On being asked to point out as to how the judgment and decree of the Courts below are perverse qua limitation, learned counsel for the appellant argues that as the impugned order was a non-speaking order, the said order has to be treated as void order and there is no limitation to challenge the void order and hence, judgment and decree of the Courts below are perverse.

3. Learned counsel for the respondents submits that as per the judgment of the Hon'ble Supreme Court of India in Civil Appeal No.1852-1989 with Civil Appeal No.4772-1989, titled as, State of Punjab and others vs. Gurdev Singh and Ashok Kumar, decided on 21.08.1991 even void orders are to be challenged within a period of 03 years and as the order impugned in the civil suit was of dated 21.05.2004 and the civil suit was filed on 16.10.2009, the said suit was clearly beyond the period of limitation provided and hence, judgment and decree of the Courts below are perfectly valid and legal.

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

5. The question which arises for determination in the present appeal is, as to whether, there is any period of limitation provided to challenge the void orders or not, even if, it is assumed that order impugned in the civil suit is void.

6. The said issue has already been settled by the Hon'ble Supreme Court of India while passing order in Gurdev Singh and Ashok Kumar (supra). Relevant paragraphs of the said 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 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 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 "fight 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 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 [Art. 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 then 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 (i) Mt. Bole v. Mt. Koklam and Ors., (AIR 1930 PC 270 and (ii) Gannon Dunkerley and Co. v. The Union of India (AIR 1970 SC 1433).

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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 binding upon him. 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.

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11. The Allahabad High Court in Jagdish Prasad Mathur and ors. v. United Provinces Government (AIR 1956 All. 114) has taken the view that a suit for declaration by a dismissed employee on the ground that his dismissal is void, is governed by [Article 120](#) of the [Limitation Act](#). A similar view has been taken by Oudh Chief Court in Abdul Vakil v. Secretary of State and Anr., (AIR 1943 Oudh 368). That in our opinion is the correct view to be taken. A suit for declaration that an order of dismissal or termination from service passed against the plaintiff is wrongful, illegal or ultra vires is governed by [Article 113](#) of the [Limitation Act](#). The decision to the contrary taken by the Punjab & Haryana High Court in these and other cases ([State of Punjab v. Ajit Singh](#) (1988 (1) SLR 96) and(ii) [State of Punjab v. Ram Singh](#) (1986) (3)SLR

379) is not correct and stands over- ruled.”

7. Bare perusal of the above would show that even void orders are to be challenged within the period of limitation and once, it is conceded fact that suit was filed by the appellant-plaintiff beyond the period of three years from the date of cause of action, the same was clearly time barred and was rightly dismissed by the trial Court on the ground of limitation.

8. Keeping in view the above, as learned counsel for the appellant has not been able to point out any perversity in the judgment and decree of the Courts below, present regular second appeal is dismissed.

April 25, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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