

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

(221)

RSA-5576-2018 (O&M)

Date of Decision : April 19, 2024

The State of Punjab and others**.. Appellants****Versus****Head Constable Paramjit Singh****.. Respondent****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Rohit Ahuja, Deputy Advocate General, Punjab,
for the appellants.

None for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

1. Present regular second appeal has been filed challenging the judgment and decree of the lower Appellate Court dated 29.09.2017 by which, the judgment and decree of the trial Court dated 26.11.2015 has been set aside and the suit filed by the respondent-plaintiff has been decreed.

2. Despite service, nobody has appeared on behalf of the respondent-plaintiff.

3. It may be noticed that the respondent-plaintiff was appointed as Constable in Punjab Police on 15.02.1991. While working as such, on 12.05.2006 an FIR was registered against the respondent-plaintiff under Section 326, 324 and 34 of IPC. Respondent-plaintiff was proceeded departmentally by initiating departmental proceedings, which culminated into the awarding of punishment of stoppage of two increment vide order

dated 13.03.2007. The appeal was preferred by the respondent-plaintiff, which was rejected on 04.07.2007 and even the revision preferred before the Inspector General, Jalandhar was partly accepted to the extent that the punishment of stoppage of two increment was reduced to the punishment of stoppage of one increment vide order dated 25.09.2007. Thereafter, the respondent-plaintiff filed mercy petition before the Director General of Police, Punjab, which was also rejected on 08.02.2008. The said orders were challenged by the respondent-plaintiff by filing a civil suit on 23.10.2012. The trial Court, keeping in view the evidence and the facts which came on record, dismissed the suit of the respondent-plaintiff vide judgment/decreed dated 26.11.2015. Respondent-plaintiff preferred appeal against the said judgment and decree of the trial Court and the same was allowed by the lower Appellate Court vide judgment and decree dated 29.09.2017. The lower Appellate Court has allowed the suit of the respondent-plaintiff only on the ground that Rule 16.3 of the Punjab Police Rules, 1934 has not been kept in mind while passing the order in the departmental proceedings especially when the respondent-plaintiff had been acquitted of the allegations alleged in the FIR by the Criminal Court by giving him benefit of doubt. Hence, the present regular second appeal.

4. Learned counsel for the appellants-State argues that the orders which were passed against the respondent-plaintiff after holding the departmental enquiry are of the year 2007 and even the appeal filed by the respondent-plaintiff against the said order was rejected in the year 2007 and even the mercy petition was dismissed on 08.02.2008 hence, the civil suit filed by the respondent-plaintiff on 23.10.2012 was beyond the limitation and hence, could not have been entertained and the lower Appellate Court failed to examine the said issue.

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

6. From the facts, which have already come on record, it is clear that qua the punishment orders challenged, the suit was clearly time barred as the same was filed much after expiry of three years of limitation. As per the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.1852 of 1989 titled as State of Punjab and others vs. Gurdev Singh and Ashok Kumar, decided on 21.08.1991***, even the void orders needs to be challenged within a period of three years. The 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 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 fail 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 residu- ary 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 insti- tuted (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).

8. It will be clear from these principles, the party ag- grieved 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.

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 gov- erned by [Article 120](#) of the [Limitation Act](#). A similar view has been taken by Oudh Chief Court in [Abdul Vakil v. Secre- tary of State and Anr.](#), AIR 1943 Oudh 368. That in our opinion is the correct view to be taken. A suit for declara- tion 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 ((i)[State of Punjab v. Ajit Singh](#),. [1988] 1 SLR 96 and (ii) [State of Punjab v. Ram Singh](#), [1986] 2 SLR 379 is

not correct and stands overruled.”

7. In the present case, the order passed in the departmental proceedings, appeal, revision and mercy petition, all were passed much prior to three years period keeping in view the date of filing of the civil suit i.e. 23.10.2012 hence, the suit filed by the respondent-plaintiff was beyond limitation period and the lower Appellate Court has failed to appreciate the said fact by allowing the appeal so as to allow the civil suit filed by the respondent-plaintiff.

8. Even otherwise, keeping in view the settled principle of law settled by the Hon’ble Supreme Court of India in ***Civil Appeal No.1763-1764 of 2022 titled as State of Karnataka and another vs. Umesh, decided on 22.03.2022***, even after the acquittal, the departmental proceedings can be held. The relevant paragraph of the said judgment is as under:-

“ 13 The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction.”

9. In the present case, the facts are that even in the criminal case,

the complainant had turned hostile so as to acquit the respondent-plaintiff by giving him the benefit of doubt hence, keeping in view the said fact, even Rule 16.3 of the Punjab Police Rules, 1934 will not be applicable so as to treat the disciplinary proceedings violative of the said provision. The Rule 16.3 of the Punjab Police Rules, 1934 is as under:-

“ 16.3. Action following on a judicial acquittal. - (1) When a Police Officer has been tried and acquitted by a criminal court he shall be not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not, unless -

(a) the criminal charge has failed on technical grounds; or

(b) in the opinion of the Court or of the Superintendent of Police, the prosecution witnesses have been won over; or

(c) the Court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned; or

(d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge; or (e) additional evidence admissible under rule 16.25(1) in departmental proceedings is available.

(2) Departmental proceedings admissible under sub-rule (1) may be instituted against Lower Subordinates by the order of the Superintendent of Police but may be taken against Upper Subordinates only with the sanction of Deputy Inspector-General of Police, and a police officer against whom such action is admissible shall not be deemed to have been honorably acquitted for the purpose of rule 7.3 of the Civil Services Rules (Punjab), Volume I, Part I.”

10. No other argument was raised.

11. Keeping in view the above, the judgment and decree of the lower Appellate Court dated 29.09.2017 is perverse not only to the facts as

well as to the Rule 16.3 of the Punjab of Police Rules, 1934 as well as to

that of the judgment of Hon'ble Supreme Court of India in ***Gurdev Singh's case (supra)*** and ***Umesh's case (supra)*** hence, the same is set aside. The judgment and decree of the trial Court dated 26.11.2015 is revived and the suit filed by the respondent-plaintiff is dismissed.

12. The present regular second appeal is disposed of in above terms.

13. Any civil miscellaneous application pending if any, also stands disposed of.

April 19, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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