



RSA-2128 of 2001

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

**RSA-2128 of 2001 (O&M)
Reserved on:25.08.2025
Date of decision :08.09.2025**

NANU RAM

..... Appellant

VERSUS

STATE OF HARYANA AND OTHERS

..... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPINDER SINGH NALWA

Present :- Mr. Ankur Sheoran, Advocate
for the appellant.

Mr. Gautam Kaile, DAG, Haryana.

DEEPINDER SINGH NALWA, J.

1. The present regular second appeal is directed against the judgment and decree passed by the lower Appellate Court dated 27.01.2001, as well as the judgment and decree passed by learned trial Court dated 10.09.1997 whereby, the suit for declaration filed by the appellant-plaintiff was dismissed.

2. Brief facts of the case are that the appellant-plaintiff was appointed on the post of Constable in the Police Department on 28.08.1953. He was further promoted to the post of Assistant Sub-Inspector (ASI) w.e.f. 01.06.1973 and thereafter, promoted on ad hoc basis on the post of Sub Inspector (SI) w.e.f. 24.11.1975.

3. The appellant-plaintiff was thereafter, sent for the upper school

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training course w.e.f. 01.10.1980. Upon successful completion of the said course, the appellant-plaintiff was promoted on regular basis on the post of Sub-Inspector w.e.f. 13.06.1981. The appellant-plaintiff was further promoted to the post of Inspector on ad hoc basis vide letter dated 01.05.1984. Thereafter, he was granted regular promotion on the post of Inspector w.e.f. 06.01.1988.

4. In the seniority list of Assistant Sub-Inspectors, the appellant-plaintiff's name was shown at Serial No.11, whereas his name in the seniority list of Sub-Inspectors was shown at Serial No.23 and as per the appellant-plaintiff, some persons who were lower in the seniority list were confirmed before him.

5. The appellant-plaintiff retired from service upon attaining the age of superannuation on 31.03.1992 from the post of Inspector in the Police Department.

6. Aggrieved against the order dated 01.10.1980, whereby the appellant-plaintiff was sent for the upper school training course, which he contends amounted to reversion, the appellant-plaintiff filed a suit for declaration and mandatory injunction, to an extent that the order dated 01.10.1980 whereby he was reverted from the post of SI to the post of ASI was illegal, null and void and was entitled to all benefits and emoluments as Sub-Inspector w.e.f. 24.11.1975 and Inspector w.e.f. 01.05.1984 in terms of the promotion list dated 01.06.1973 alongwith arrears and interest @ 18% per annum.

7. It was the case of the appellant-plaintiff that the above said

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order was in violation of the promotion list of ASI issued on 01.06.1973. It was further pleaded that the order dated 01.10.1980 was passed without affording any opportunity of hearing to the appellant-plaintiff. It was also pleaded that as the appellant-plaintiff was granted promotion to the post of Sub Inspector w.e.f. 24.11.1975 and on the post of Inspector w.e.f. 01.05.1984, as such his seniority should be accordingly refixed in the seniority list of Sub-Inspector and Inspector.

8. It was also pleaded by the appellant-plaintiff that as he was promoted to the post of Sub-Inspector w.e.f. 24.11.1975, he could not have been sent for the upper school training course vide order dated 01.10.1980. It was also pleaded that the pensionary benefits payable to him be calculated based on the average emoluments drawn during the last ten months of service, as per the applicable rules.

9. The respondent-defendant duly filed written statement in the above said suit. It was the case of the respondent-defendant that whenever a person is deputed from parent department i.e. Police Department to the CBI, such employee is granted the benefit of ad hoc promotion of one rank. On the basis of the said benefit of one rank, ad hoc promotions were granted to appellant-plaintiff to the post of Sub-Inspector and thereafter, to the post of Inspector.

10. It was further the case of the respondent-department that as and when a vacancy arises in the parent department, regular promotion is granted to the employee in accordance with his seniority. It was further pleaded that when the turn of the appellant-plaintiff came for promotion to the post of

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Sub- Inspector, he was accordingly, sent to the upper school training course. Thereafter, he was granted regular promotion to the post of Sub-Inspector in the parent department on 13.06.1981 and subsequently, to the post of Inspector w.e.f. 06.01.1988.

11. From the pleadings of the parties, learned trial Court framed the following issues:-

- “1. Whether the plaintiff was on the post of ASI w.e.f. 1.6.1973? OPP*
- 2. Whether the name of the plaintiff was brought in promotion list (E) vide letter dated 13.3.79 w.e.f. 2.3.1979? OPP*
- 3. Whether the order dated 10.80 is wrong, illegal null and void ab initio, arbitrary in effect? OPP*
- 4. Whether the plaintiff is entitled to get the seniority? OPP*
- 5. Whether the suit of the plaintiff is pre-mature? OPD*
- 6. Whether the suit is time barred? OPD*
- 7. Whether the plaintiff has no cause of action? OPD*
- 8. Whether the suit is bad for non-joinder and mis-joinder of the necessary parties? OPD*
- 9. Whether the Court has jurisdiction? OPD*
- 10. Relief.”*

12. The learned trial Court, after taking into consideration the evidence led by the parties, dismissed the suit filed by the appellant-plaintiff. The learned trial Court decided issues No.1 to 4 against the appellant-plaintiff, holding that the appellant-plaintiff was not entitled to get seniority and other service benefits as claimed by him. However, issue No.5 was decided in favour of the appellant-plaintiff and against the respondent-defendant. Issue No.6 was decided in favour of defendants. Issue No.7 is in favour of plaintiff.

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13. Aggrieved against the judgment and decree dated 10.09.1997 passed by the learned trial Court, the appellant-plaintiff preferred an appeal before the learned lower Appellate Court. The learned lower Appellate Court dismissed the appeal filed by the appellant-plaintiff vide judgment and decree dated 27.01.2001.

14. A perusal of the judgment passed by the learned lower Appellate Court would show that the learned Appellate Court has held that the appellant-plaintiff was granted the benefit of ad hoc promotions to the posts of Sub-Inspector and Inspector while he was serving in the CID department. However, as and when his turn came for promotion in the parent department, he was duly considered for promotion to the posts of Sub-Inspector and Inspector, in accordance with his seniority in the parent cadre. It was further held that the suit filed by the appellant-plaintiff was barred by limitation.

15. Aggrieved against the judgments and decrees passed by the learned Courts below, the appellant-plaintiff has filed the present regular second appeal.

16. Learned counsel appearing on behalf of the appellant submits that the learned Courts below have erred in holding that the appellant-plaintiff was not entitled to the benefit of seniority on the basis of ad hoc promotion granted to him while he was on deputation in the CID department. It is the contention of the learned counsel for the appellant that ad hoc promotions granted to the appellant-plaintiff should have been taken into consideration for the purpose of fixation of seniority to the posts of Sub-



Inspector and Inspector. It was also contended that the said suit filed by the appellant-plaintiff was within the period of limitation.

17. It is also contended by learned counsel for the appellant that the respondent-defendant has not rightly fixed the retiral benefits of the appellant-plaintiff, as last ten months average emoluments have not been taken into consideration for calculating the pensionary benefits as per the rules.

18. Learned counsel appearing on behalf of the respondent-defendant submits that the learned Courts below, after taking into consideration the facts of the case and evidence led by the parties, have rightly decided the issues against the appellant-plaintiff. Therefore, the judgments and decrees passed by learned Courts below are liable to be upheld.

19. After hearing the learned counsel for the parties at some length and going through the records of the case, the issue involved in the present case pertains to whether the order dated 01.10.1980 passed by the respondent-defendant is legal and the suit filed by the appellant-plaintiff was within limitation.

20. A perusal of the facts of the case would show that the appellant-plaintiff was promoted on ad hoc basis to the post of Sub-Inspector w.e.f. 24.11.1975 while he was on deputation to the CID department.

21. Thereafter, the appellant-plaintiff was further given ad hoc promotion to the post of Inspector w.e.f. 01.05.1984 while he was still on deputation in the CID department. The appellant-plaintiff retired from

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service while he was on deputation in CID department. In order to become eligible for promotion to the post of Sub-Inspector, it is necessary for an Assistant Sub-Inspector to qualify upper school training course. It is an admitted fact that while granting ad hoc promotion to the appellant/plaintiff as Sub-Inspector, the appellant-plaintiff had not qualified the upper school training course.

22. As per the seniority of the appellant-plaintiff in the parent department, when his turn came up for consideration for promotion to the post of Sub-Inspector, he was sent for the upper school training course by the parent department. After successful completion of the said training course, the appellant-plaintiff was granted regular promotion as Sub-Inspector in the parent department w.e.f. 13.06.1981. It is a well-settled law that no employee can claim benefit of an ad-hoc promotion.

23. Taking into consideration the above said facts, there is no infirmity in the order dated 01.10.1980. The said order cannot be held to be a case of reversion as the appellant-plaintiff was never promoted on regular basis on the post of Sub Inspector.

24. As far as fixation of seniority of the appellant-plaintiff on the posts of Sub Inspector and Inspector is concerned, a perusal of the above said facts would show that as and when, the turn of appellant-plaintiff came up as per his seniority for promotion in the parent department to the posts of Sub-Inspector and Inspector, his case was duly considered. Taking into consideration the seniority of appellant-plaintiff in the parent department, he was promoted on the post of Sub Inspector w.e.f. 13.06.1981 and as



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Inspector w.e.f. 06.01.1988.

25. The promotions granted to the appellant-plaintiff was based on the principle of 'Next Below Rule' and as such, the promotions granted to the appellant-plaintiff to the post of Sub-Inspector and Inspector by the respondent-defendant was legal and valid, and as such, there is no infirmity in fixation of seniority of the appellant-plaintiff as Sub-Inspector and Inspector.

26. So far as the period of limitation is concerned, a perusal of the facts of the case would show that the suit was filed by the appellant-plaintiff against the order dated 01.10.1980 in the year 1994 after a period of more than 13 years, which was hopelessly time barred.

27. Hon'ble the Supreme Court in the case of **State of Punjab and others v. Gurdev Singh and Ashok Kumar, 1991 (4) SCC 1**, has held that even a void order is to be challenged within a period of limitation. Relevant portion from the said judgment reads 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 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 Primary Council 270 and ***Gannon Dunkerley and Co. v. The Union of India***, AIR 1970 Supreme Court 1433).*

5. In the instant cases, the respondents were dismissed from service. May be illegally. The order of dismissal has clearly infringed their right to continue in the service and indeed they were precluded from attending the office from the date of their dismissal. They have not been paid their salary from that date. They came forward to the Court with a grievance that their dismissal from service was no dismissal in law. According to them the order of dismissal was illegal, inoperative and not binding on them. They wanted the Court to declare that their dismissal was void and inoperative and not binding on them and they continue to be in service. For the purpose of these cases, we may assume that the order of dismissal was void inoperative and ultra vires, and not voidable. If an Act is void or ultra vires it is enough for the Court to declare it so and it collapses automatically. It need not be set aside. The aggrieved party can simply seek a declaration that it is void and not binding upon him. A declaration merely declares the existing state of affairs and does not 'quash' so as to produce a new state of affairs.

*6. But nonetheless the impugned dismissal order has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or Court. In ***Smith v. East. Elloe Rural District Council***, [1956] AC 736 at 769 Lord Redcliffe observed:*



"An order even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

7. *Apropos to this principle, Prof. Wade states: "the principle must be equally true even where the 'brand' of invalidity is plainly visible: for their also the order can effectively be resisted in law only by obtaining the decision of the Court (see: Administrative Law 6th Ed. p. 352). Prof. Wade sums up these principles: "The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality valid. It follows that an order may be void for one purpose and valid for another, and that it may be void against one person but valid against another." (Ibid p. 352)*

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."*

28. Further, Hon'ble the Supreme Court in **State of Punjab v. Rajinder Singh, 1999 SCC (L&S) 664**, making reference to the judgment in Gurdev Singh's case (supra) has held as under:-

"4. After conducting departmental enquiry, by proceedings dated 10-12-1981, two increments with cumulative effect were stopped. The suit was filed on 15-1-1988. Article 58 of the Schedule to the Limitation Act 21 of 1963 prescribes three years limitation from the date of the order, to seek a declaration that the impugned order was illegal and did not bind him. The residuary provision is Article 113 also equally prescribes the limitation of three years. The limitation starts running from the date of passing of the order withholding increments. On expiry of three



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years from that date, the limitation expires by the efflux of time. Consequently, the suit gets barred by limitation. Section 3 of the Limitation Act directs the court to take notice of the bar of limitation before proceeding further. This legal position was set at rest by the judgment of this Court in State of Punjab v. Gurdev Singh, (1991) 4 SCC 1. The suit of the respondent is barred by limitation."

29. In regard to contention raised by the learned counsel of the appellant-plaintiff that last ten months average emoluments was not taken into consideration for the purpose of fixation of retiral benefits is concerned, a perusal of the judgments and decrees passed by the learned Courts below would show that a specific finding has been recorded by both the learned Courts below that the retiral benefits of the appellant-plaintiff have been fixed as per the Rules. It is also not the case of the appellant-plaintiff before this Court that the retiral benefits fixed by the respondent-defendant are contrary to the Rules.

30. Taking into consideration the facts of the case and the evidence led by the parties, this Court finds no infirmity or illegality in the judgments passed by the learned Courts below and the same are hereby affirmed. Accordingly, the present appeal is dismissed.

31. Pending application(s), if any, also stand(s) disposed of accordingly.

(DEEPINDER SINGH NALWA)
JUDGE

08.09.2025

Rimpal

Whether speaking/reasoned	Yes
Whether Reportable :	No