



CWP-19693-2013 (O&M)

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

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CWP-19693-2013 (O&M)
Date of Decision :08.07.2025

Punjab State Electricity Board and others**...Petitioner**

Versus

Binder Singh**...Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Vivek Sharma, Advocate for the petitioner-Board.

None for respondent-workman.

* * *

Harsimran Singh Sethi, J. (Oral)

1. Despite information, no one has appeared on behalf of the respondent-workman. Hence, he is proceeded ex-parte.
2. In the present petition, challenge is to the award dated 09.04.2013 (Annexure P/5) passed by the Industrial Tribunal, Ludhiana by which, the respondent-workman was directed to be reinstated in service with continuity and 25% back wages.
3. Learned counsel for the petitioner-Board argues that the respondent-workman was recruited in the year 1987 as Work Charge T Mate and he continued working as such for a period of 08 years till he absented himself from performing his duty and ultimately keeping in view the said fact that respondent-workman was not performing his duty and was also involved in FIR No.49 dated 18.06.1995 under Section 379/511 of the IPC



with regard to theft of transformer, the services of the respondent-workman were terminated by the petitioner-Board on 29.06.1995.

4. Learned counsel for the petitioner-Board submits that no action was taken by the respondent-workman to challenge the said order of termination of his services or to avail any remedy before the Labour Court for a period of 10 years and a reference against order of termination was ultimately raised by the respondent-workman before the Labour Court in the year 2005 hence, the reference raised by the respondent-workman was so belated that it could not have been taken into consideration by the Labour Court so as to grant him the benefit of reinstatement in service with continuity along with 25% back wages.

5. Learned counsel for the petitioner-Board submits that once, the respondent-workman was facing a criminal case and his services were consequently terminated in the year 1995, the delay in raising the reference against termination was fatal so as to avail the remedy under the Industrial Dispute Act, 1947 (hereinafter referred to as '1947 Act'), which fact has not been at all considered though, the same was raised before the Labour Court.

6. Respondent-workman has already been proceeded exparte.

7. I have heard learned counsel for the petitioner-Board and have gone through the record with his able assistance.

8. Once, the services of the respondent-workman were terminated in the year 1995 and he did not agitate against the same for a period of one decade and did not furnish any explanation for not availing any remedy against said order of termination for a period 10 years, the order terminating the services of the respondent-workman became final.



9. Learned counsel for the petitioner-Workman further submits that the impugned order passed by the Tribunal rejecting the claim of the petitioner-Workman qua his termination is on the ground that the petitioner-Workman did not raised the grievance in a time bound manner. It is worthwhile to note that 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 "***State of Punjab Vs. Gurdev Singh and Ashok Kumar***" decided on 21.08.1991, wherein it has been held that even a void order needs to be challenged within a period of 3 years. The relevant paragraph Nos.4, 8 and 11 of the said judgment is as under:-

"XXX.....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).

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.

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.XXX” .

10. Reliance can also be placed upon the judgment of the Hon’ble Supreme Court of India in ***Nedungadi Bank Limited Vs. K.P. Madhavankutty*** 2000 (1) SCR 459, wherein it has been held that though there is no time limit prescribed for an appropriate Government to exercise its power under the Industrial Disputes Act, 1947 but the power has to be exercised reasonably in a rational manner. The purpose of reference is to keep industrial peace in an establishment. The belated reference of the 7



years was thus held to be destructive to the industrial peace and defeated the very object and purpose of the 1947 Act. The relevant paragraphs read as under:-

"Law does not prescribe any time limit for the appropriate government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about seven years of order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising industrial dispute was ex facie bad and incompetent.

In the present appeal it is not the case of the respondent that the disciplinary proceedings, which resulted in his dismissal, were in any way illegal or there was even any irregularity. He availed his remedy of appeal under the rules governing his conditions of service. It could not be said that in the circumstances industrial dispute did arise or was even apprehended after lapse of about seven years of the dismissal of the respondent Whenever a workman raises some dispute -it does not become industrial dispute and appropriate government cannot in a mechanical fashion make the reference of the alleged dispute terming as industrial dispute. Central Government lacked power to make reference both on the ground of delay in invoking the power under Section 10 of the Act and there being no industrial dispute existing or even apprehended. The purpose of reference is to keep industrial peace in an establishment. The present reference is destructive to the industrial peace and defeats the

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very object and purpose of the Act. Bank was justified in thus moving the High Court seeking an order to quash the reference in question."

11. In the present case, the respondent-workman challenged the order of termination of his services after a period of 10 years, which factor has not at all been considered by the Labour Court while granting the relief in favour of the respondent-workman. The delay in the present case was fatal as the same has gone unexplained.

12. Keeping in view the totality of the facts and circumstances of the present case, the impugned award dated 09.04.2013 (Annexure P/5) passed by the Industrial Tribunal, Ludhiana being contrary to the settled principle of law as noticed hereinbefore, cannot be sustained in the eyes of law and the same is accordingly set aside.

13. It may be noticed that any amount paid to the respondent-workman under Section 17-B of the 1947 Act will not be recovered by the petitioner-Board from the respondent-workman.

14. Present petition is allowed in above terms.

15. Civil miscellaneous application pending, if any, is also disposed of.

July 08, 2025
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No