



**107+211 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CM-16448-CWP-2024 in/and
CWP No.19204 of 2017
Date of Decision : 07-03-2025**

THE DIRECTOR STATE TRANSPORT PUNJAB, AND ANOTHER

.....Petitioner(s)

VERSUS

**THE PRESIDENT, PUNJAB ROADWAYS, CHANDIGARH UNION
PUNJAB BRANCH AND ANOTHER**

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Harnek Singh, Advocate
for the respondent No.1.

Mr. T.P.S Chawla, Sr. DAG Punjab.

HARSIMRAN SINGH SETHI, J. (Oral)

CM-16448-CWP-2024

1. Learned counsel for the respondent No.1 submits that as the main case i.e CWP No. 19204 of 2017 had already been listed for today hence, the present application for preponement may kindly be withdrawn.

2. Application stands dismissed as withdrawn.

CWP No.19204 of 2017

1. In the present petition, the challenge is to the award passed by the Labour Court dated 28.03.2016, copy of which has been appended as Annexure P-5 by which, the order of punishment bearing No.14769-73

imposed upon the respondent No.1 on 27.09.1996 , order dated 18.09.2000 bearing order No.16366-68 and order dated 22.10.1999 bearing order No.17082 have been held to be illegal and have been set aside with the consequential benefits to the workman.

2. Learned counsel appearing on behalf of the petitioners submits that the punishment orders dated 27.09.1996, 22.10.1999 and 18.09.2000 were passed by the Tribunal and in the absence of any challenge to the said punishment by the workman as even the grievance regarding the punishment orders was raised by the Union and not the workman himself and that too in the year 2006 i.e. after a period of more than 10 years after the passing the punishment orders, the same have been set aside by the Tribunal vide its impugned order on the ground that the punishment orders dated 27.09.1996, 22.10.1999 and 18.09.2000 were bad in law.

3. Learned counsel for the petitioner submits 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 in the absence of any challenge to the punishment order within the prescribed limitation period, the Court could not have looked into the said aspect.

4. Learned counsel for the respondent-Union submits that once the punishment orders dated 27.09.1996, 22.10.1999 and 18.09.2000 passed were illegal, the grievance raised on behalf of the respondent-workman has rightly been answered by the Tribunal hence, the same be upheld.

5. I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

6. It may be noticed that the punishment orders dated 27.09.1996, 22.10.1999 and 18.09.2000 were passed in the departmental proceeding which were conducted against the workman. The reference was raised by the Union and not by the workman themselves so as to declare that the increment of the workman were stopped arbitrarily. The punishment orders dated 27.09.1996, 22.10.1999 and 18.09.2000 were not directly under challenge in the claim petition but the prayer was to release the increments in the salary which have been stopped.

7. The ground was raised by the petitioner that the challenge to the punishment orders dated 27.09.1996, 22.10.1999 and 18.09.2000 after a period of 10 years cannot be entertained especially when there were specific orders passed imposing punishment. The Labour Court has come to the conclusion that the reference raised by the Union cannot be defeated merely on the ground of delay. By passing the said orders, the judgment of Hon'ble Supreme Court of India in ***Gurdev Singh's case (supra)***, wherein it has been held that even the void order is to be challenged within a period of 3 years, has been ignored by the Labour Court. 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”

8. Learned counsel for the respondent-workman has not been able to rebut the same that even the void orders are to be challenged within a period of 3 years.

9. While applying the judgement passed by the Hon’ble Supreme Court of India in ***Gurdev Singh’s case (supra)*** to the present case, it is clear that the punishment orders dated 27.09.1996, 22.10.1999 and 18.09.2000, which have been set aside by the Tribunal were challenged by the Union much after the expiry of 3 years despite no challenge to the same hence, the same could not have been gone into by the Tribunal so as to set aside the same.

10. Keeping in mind the above discussed aspects, the award passed by the Labour Court, Ludhiana dated 28.03.2016 (Annexure P-5) is perverse to the settled principle of law settled by the Hon'ble Supreme Court of India in ***Gurdev Singh's case (supra)*** and therefore, cannot be upheld and the same is accordingly set aside.

11. Present petition is allowed in above terms.

07-03-2025
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES
Whether reportable: NO