IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No.114 **RSA-2641-2024(O&M)**

Date of Decision:21.01.2025

SMT. GURDIAL KAUR ...Appellant

VERSUS

FOOD CORPORATION OF INDIA AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Mr. G.S. Bal, Sr. Advocate with
Ms. Lovepreet Kaur, Advocate and
Mr. D.S. Gill, Advocate
for the appellant.

--

LAPITA BANERJI, J.(ORAL)

1. Under challenge in the Regular Second Appeal is the judgment and decree passed by learned Civil Judge (Jr. Division), Bathinda on January 05, 2019 and the impugned judgment passed by learned District Judge, Bathinda on May 17, 2024, being the lower appellate Court.

2. In the impugned judgment dated May 17, 2024, learned District Judge came to the finding that the trial Court did not err in law and on facts and re-affirmed the decree and judgment passed by learned trial Court. It has been held that the plaintiff being the widow of the deceased employee of the Food Corporation of India (for short 'the FCI') having not challenged the penalty orders passed by the defendants against her husband during his service period could not ask for setting aside of the same and grant of monetary reliefs, consequent to such setting aside.

3. The deceased husband of the plaintiff passed away on 21.04.2013. There was no categoric pleading in the plaint with regard to reason for the penalty orders being void and non est in the eyes of law. The plaintiff furnished an affidavit and also gave oral evidence regarding the penalty orders being void without pleading the basic facts. Further, the plaintiff had challenged only 10 penalty orders, whereas it was submitted by the defendants that approximately 60 penalty orders were passed against the husband of the plaintiff-appellant.

4. The first Appellate Court held that even though there was sufficient number of judgments to show that reduction of pay or any kind of penalty could not be imposed by an authority not competent to do so but a specific challenge to that effect had to be made. It was incumbent upon the plaintiff to sought how the order of penalty was a nullity in the eye of law. Merely placing on record a particular order of penalty and subsequently submitting that the same to be void without leading any corroborative evidence, was not sufficient to discharge the onus of proving the case that the plaintiff had to discharge for succeeding in the suit.

5. Since the initial onus was not discharged by the plaintiff, there was no question of shifting the burden on the defendants to disprove the allegations. The penalty orders relied upon by the plaintiff-appellant were all speaking orders that were passed from time to time after a thorough regular enquiry in departmental proceedings.

6. The penalty orders were not challenged by the husband of the plaintiff-appellant during his life time. The said orders were passed from the years 2001 to 2008 and the husband of the plaintiff passed away in the year 2013. The suit for declaration was filed by the plaintiff in the year 2013.

Accordingly, the ratio of the judgment passed by this Court in **Dharam Pal Vs. Union of India and Others, 2016 (1) SCT 120,** and the judgment passed by Hon'ble Supreme Court of India in **State of Jammu & Kashmir Vs. R.K. Zalpuri and Others, 2015 (4) S.C.T. 457** was relied upon to come to the findings that since no specific declaration was sought for thus the penalty orders were illegal. Merely, mentioning of the same would not tantamount to the said order being proven illegal. Without a prayer for declaration, the relief of injunction could not be granted.

7. The facts of the case, in brief, are as follows:-

(i) The plaintiff-appellant is a widow of one Khushal Singh, who retired as Assistant Grade-I (D) Food Corporation of India, District Office Bathinda. The husband of the plaintiff passed away on April 21, 2013. The husband of the plaintiff was relieved from service on June 30, 2010. A formal retirement order was passed on August 02, 2011.

(ii) A demand notice dated July 15, 2011 was served by the Area Manager, FCI, Bathinda for a sum of Rs.12,02,182/- on account of vigilance recoveries. Out of said sum, Rs.66,000/- was adjusted from the salary of her deceased husband. The deceased employee was also directed to pay a sum of Rs.11,36,182/-.

(iii) The plaintiff claimed that since the pay scales of Group III and IV employee of FCI was revised w.e.f. January 01, 1997 and further revised from January 01, 2007, her husband was entitled to salary on revised pay scale following the revision of wages. The said pay scale was not given to her husband before his death neither, were the wages fixed in the revised pay-scale during his service period nor his pay was fixed even three years after the date of his retirement.

8. The plaintiff had claimed arrears upon revision of pay from January 01, 1997 to December 31, 2006 and further arrears for the subsequent revision from January 01, 2007 to June 30, 2010. She had also claimed for arrears of gratuity, leave-in-cashment and CPF payment on the revised pay scale along with grant of medical identity card for getting cashless medical facilities in empanelled hospitals.

9. Admittedly, as per Regulation 86 of Food Corporation of India (Staff) Regulations, 1971 increments payable in the time scale of a post to which a person is appointed is to be drawn as a matter of course except where such increments have been withheld, as a result of a penalty imposed under these regulations. All such increments would fall due on the first of January of every year. The plaintiff alleged that since there were 10 frivolous penalty orders passed against her husband, proper pay fixation was not done in the revised pay scale with effect from January 01, 1997 and January 01, 2007. Various grounds were alleged for challenging the aforesaid 10 orders of penalty. She alleged that despite several representations being made by her husband and herself in the District office, the pay was not revised. No recovery could be effected from the accrued arrears, payable to her husband. Since the FCI had not specified the rules/regulations regarding fixation of pay of its employees, the Fundamental Rules for revision of pay and the supplementary rules applicable to the Central Government employees were also applicable to the FCI employees.

10. The defendants-FCI controverted the allegations by filing written statement. It was submitted that various departmental proceedings had reached culmination against the plaintiff's husband and a demand notice

dated July 15, 2011 for recovery of Rs.11,36,182/- was sent to her deceased husband. Thereafter, the deceased employee was relieved from his service. The pay of the deceased employee was fixed in the revised pay scale w.e.f. January 01, 1997 and w.e.f. January 01, 2007, as per FCI and RO, Punjab, Chandigarh, vide order dated July 17/21, 2014 after proper scrutiny of all the documents and vigilance penalties.

11. Initially, provisional payment of death-cum-retirement gratuity, Earned Leave/HPL encashment and PLI based on un-revised pay scale as on June 30, 2010 alongwith a sum of Rs.16,19,223/- on account of final CPF, was paid on August 05, 2013. However, the corporation reserved its right to recover the amount that was already paid to the employee. Various amounts from DCRG (death-cum-retirement gratuity), EL/HPL etc. was deducted due to vigilance recoveries. Since the plaintiff had not challenged the penalty orders, the defendants prayed for dismissal of the suit.

12. It was noted by learned trial Court that none of the penalty orders were challenged by the deceased employee during his period of service or during his life time. The employee had accepted the orders and did not prefer the departmental remedies challenging the said penalty orders. The plaintiff only stated in the plaint that the said orders were frivolous and void by way of an affidavit. Out of 60 penalty orders against the deceased employee, the plaintiff had only mentioned 10 orders. In the cross-examination of the plaintiff, she had admitted that she did not know whether the penalty orders were passed against her husband during his life time and whether her deceased husband challenged the same during his service period or before his death.

13. Resultantly, it was held by learned trial Court that the suit of the plaintiff failed and was dismissed with costs.

14. The first Appellate Court also held that no departmental appeal before appropriate forum was preferred by the deceased employee against 60 penalty orders during his service period or after his retirement in 2010 or before his unfortunate death in 2013. The plaintiff's husband retired on June 30, 2010 and the suit was registered on December 04, 2013, after three years of the retirement of her husband. Therefore, the present suit was barred by limitation.

15. The first Appellate Court after analyzing the impugned judgment and decree passed by learned Civil Judge (Junior Division), Bathinda on January 05, 2019, came to the finding that there was neither error in law nor on facts to interfere with the findings in the impugned judgment/decree.

16. In the present regular second appeal, the short question of law, which falls for consideration is 'whether without challenging the orders of penalty or bringing on record the reason why the plaintiff asserted same to be void, the impugned judgments passed by learned trial Court and the first Appellate Court would be interfered with".

17. This Court is of the considered view that since the deceased employee did not challenge the various penalty orders passed against him from 2001 to 2006 during the course of his service or 03 years after his retirement or prior to his death, it was not open for the plaintiff to challenge the same in a time barred suit. The deceased employee had himself accepted the finality of the said orders. Out of 60 penalty orders, only 10 were challenged by the plaintiff. The said 10 orders are re-produced herein:-

> "(i) Reduction in pay by one stage for one year during the penalty period he would not earn any increment and after expiry of one year he would start earning increment from reduced stage of pay vide order No. Vig.21(FZR-4944)/98/dated 19.03.2001.
> (ii) Reduction in pay by two stages for one year during the penalty period he would not earn any increment and after expiry of one year he would start earning increment from reduced stage of pay vide order No. Vig.21(FZR-4699)/98/6904 dated 30.10.2000 and enhanced by ED(North) to that of recovery of Rs.75,000/- alongwith earlier penalty already imposed vide order No. Vig.5(150)/150/06/NZ/PB/MJR dated 29.12.06.
> (iii) Reduction in pay to the minimum of pay of the post held alongwith recovery of Rs.2,00,000/- vide order No. Vig. 21 (FZR-9552)/02 dated 12.12.06.
> (iv) Reduction in pay by one stage for one year with Cumulative Effect alongwith recovery of Rs.20,000/- vide order No. Vig. 21 (FZR-3923)/PB/SL/07 dated 03.05.2008.
> (v) Reduction in pay by 3 stages with Cumulative Effect plus reovery of Rs.60,000/- vide order No. Vig.4 (FZR-1705)/PB/06 dated 30.09.2008.
> (vi) Stoppage of one increment with cumulative effect alongwith recovery of Rs.50,000/- vide order No. Vig.21 (FZR-11014)/2000 dated 27.12.2006.
> (vii) Reduction in pay by one stage for one year without cumulative effect vide order No. Vig.21 (FZR-8636)/2002 dated 13.07.05.
> (viii) Reduction in pay by one stage for one year without cumulative effect vide order No.A/2(910)/Vig/2002/03/1206 dated 01.09.03.
> (ix) Reduction in pay by one stage without cumulative effect plus recovery of Rs.20,000/- vide order No. Vig.4(3170)/07/PB/FZR dated 11.03.07.
> (x) Stoppage of one increment without cumulative effect besides recovery of Rs.10,000/- vide order No. Vig.21 (FZR-9514)/02 dated 03.11.2006."

18. There is not even a bald assertion against the approximately other 50 penalty orders passed by the employer corporation in the departmental proceedings against the husband of the plaintiff. Due to the abovenoted facts, the present regular second appeal deserves to be dismissed.

19. Mr. G.S. Bal, learned senior counsel representing the petitioner placed reliance on **Malkiat Singh vs. State of Haryana,** regular second appeal No. 3602 of 2006 decided on August 16, 2007 to contend that in case, the punishment order was void, no recovery could be made on the basis of such order of punishment.

20. The facts of the case are completely distinguishable, since in **Malkiat Singh's case (supra)**, the appellant was served with summary allegations and issued show cause notice and the order of punishment was passed without even considering his reply to the show cause notice. Thereafter, the appellant challenged the aforesaid order in departmental proceedings and was unsuccessful in the same. Since the impugned orders were passed without affording him a reasonable opportunity, it was held that the impugned orders were void and the plaintiff was entitled to arrears of pay. The punishment orders were held to be void. It was also held that the period of limitation that was argued on behalf of the defendant was a technical plea, taken for the purpose of defeating the legitimate claims of delinquent official. In case, where the cause of action is recurring, technical pleas of limitation should not be taken up by the State.

21. In the present case, all the penalty orders reached finality as no challenge was made by the husband of the plaintiff. Furthermore, there is nothing on record to show that the deceased husband challenged the departmental proceedings by way of filing reply or that no opportunity of hearing was afforded to him.

22. Accordingly, this Court is of the view that the case of **Malkiat Singh (supra)** has no application to the present regular second appeal. Consequently, Regular Second Appeal 2461 of 2044 is hereby **dismissed**.

23. Pending application(s), if any, shall also stand disposed of.

(LAPITA BANERJI)
JUDGE

21.01.2025
dinesh

Whether speaking/reasoned? **Yes**

Whether reportable? **Yes/No**