



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1954 of 1998 (O&M)

Date of Order:06.05.2025

State of Haryana

.Appellant

Versus

Prem Parkash

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Vibha Tiwari, AAG, Haryana

Mr. Narayan Prasad Gupta, Advocate
for the respondent.

ANIL KSHETARPAL, JUDGE (Oral)

1. The State of Haryana assails the correctness of the First Appellate Court's judgment which in turn has partly reversed the judgment of the trial court.

2. The only issue which requires adjudication is 'whether a suit for grant of decree of declaration that the order of retirement from service is invalid, can be filed at any point of time or whether it is subject to a period of limitation?

3. The detailed facts are not required to be stated because the State did not file first appeal against the judgment passed by the trial court while partly decreeing the suit, however, necessary facts for adjudication of this appeal are required to be noticed.

4. The plaintiff claims to have joined as Inspector Consolidation in the State of Pepsu on 20.10.1952 and continued to work till 27.12.1955, as such. Thereafter, he was promoted as Assistant Consolidation Officer on



28.12.1955 and continued to work upto October, 1958. Thereafter, he was reverted to the post of Inspector and he crossed the first efficiency bar in the year 1967, however, he was not given certain benefits. After re-organization of the States, the plaintiff (respondent herein) was allocated State of Haryana and on partial winding up of the consolidation department, his services were transferred to the Settlement Department where he worked as Kanungo till 30.09.1969. Thereafter, he worked as Revenue Kanungo. In the month of January, 1980, he was retired at the age of 55 and he filed the suit on 14.02.1989, to declare his retirement as illegal.

5. The defendants contested the suit on the ground that the plaintiff sought voluntary retirement vide his application dated 21.08.1978, which was allowed on 08.11.1979.

6. The trial court partly decreed the suit, however, refused to declare that the order dated 08.11.1979, is illegal. The plaintiff filed first appeal, which has been allowed.

7. While admitting the appeal, the execution of the decree was stayed.

8. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the scanned copy of the requisitioned record.

9. The learned counsel representing the State of Haryana has submitted that the suit filed by the plaintiff was filed beyond the prescribed period of limitation and the courts have erred in observing that there is no prescribed period of limitation for filing the suit for declaration.

10. Per contra, the learned counsel representing the respondent



submits that the order passed retiring the respondent (plaintiff) was non-est in the eyes of law and hence, it was not required to be challenged. He relies upon the judgment passed by a Larger Bench of the Supreme Court in **The State of Madhya Pradesh vs. Syed Qumarali, 1967 SLR, 228.**

11. The period of limitation for filing the suit for grant of decree of declaration is prescribed under Part-III of the Schedule attached to the Limitation Act, 1963 (hereinafter referred to as 'the 1963 Act'). Article 58 of the Schedule reads as under:-

58	To obtain any other declaration	Three years	When the right to sue first accrues.
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12. It is evident that a suit for declaration is covered by Article 58 of the Schedule attached to the 1963 Act. The statute uses the following expression:- “***when the right to sue first accrues***”. In other words, the suit for grant of decree of declaration regulated by Article 58 of the 1963 Act and it is required to be filed within a period of three years from the date when the right to sue first accrues. In this case, the impugned order retiring the defendant (plaintiff) was passed on 08.11.1979. He was relieved from service with effect from 01.01.1980 and thereafter, he was not in service. He made repeated representations and notices, which would not give rise to a fresh cause of action. At the most, the defendant can claim that the period of notice as prescribed under Section 80 of the Code of Civil Procedure, 1908, is required to be excluded.

13. The judgment passed in **Syed Qamarali's case (supra)** is with respect to a suit filed for recovery and not with respect to declaration. The plaintiff also does not claim that there were continuing breaches as provided



under Section 22 of the 1963 Act.

14. Keeping in view the aforesaid facts and discussion, the judgment passed by the First Appellate Court is set aside and that of the trial court is restored.

15. The appeal is allowed.

16. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

May 06, 2025

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