IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2635 of 2022 (O&M)
Date of decision : 21.05.2025

VED PARKASH

..... Appellant

VERSUS

THE STATE TRANSPORT COMMISSIONER AND OTHERS

..... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPINDER SINGH NALWA

***

Present :- Mr. Rajesh Kumar Dhankhar, Advocate
for the appellant.

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Deepinder Singh Nalwa, J. (Oral)

1. This regular second appeal is directed against the judgment and decree dated 03.11.2017 passed by the learned Civil Judge (Senior Division), Bhiwani, and judgment and decree dated 23.03.2022 passed by the learned District Judge, Bhiwani, upholding the judgment and decree passed by learned trial Court.

2. Brief facts of the case are that the appellant-plaintiff was initially appointed as a driver in Haryana Roadways, Sub Depot, Bhiwani on 08.12.1993. He remained in service for about 10-12 days thereafter, the appellant was again appointed on a contractual basis to the post of driver on 09.06.1994. His services were terminated w.e.f. 16.08.1994. Subsequently, the appellant-plaintiff was again appointed on a contractual basis to the post of driver in a Haryana Roadways vide order dated 30.09.1994 w.e.f.

01.10.1994. His services were regularized on the above said post w.e.f. 01.05.1998. The appellant-plaintiff retired from service upon attaining the age of superannuation on 09.01.2014.

3. The appellant-plaintiff filed a civil suit seeking declaration and mandatory injunction to the effect that he was legally entitled for regularization of his service on the post of driver w.e.f.30.09.1996 instead of 01.05.1998, alongwith all consequential benefits of a regular employee.

4. In the above said suit, the case of appellant-plaintiff was that in terms of the policy dated 23.03.1998, employees of the State Transport Department who had completed 02 years of service during the period from 16.06.1994 to 07.01.1998 were entitled to be regularised. It was his case that as of 30.09.1996, he had completed 2 years of service and was, therefore, entitled to regularization from that date.

5. The respondent, in its written statement, contended that under the policy dated 23.03.1998, all drivers/conductors who having been in service and completed two years of contractual service during the period from 16.06.1994 to 07.01.1998 were eligible for regularization against the available vacant post, provided there was no break in service exceeding 30 days. It was the respondent's case that although the appellant completed 02 years of service on 17.05.1996, however, due to a break in service exceeding 30 days prior to 01.10.1994 during the period from 16.6.1994 to 07.01.1998, he was not eligible for regularization w.e.f.30.09.1996.

6. The above said suit came up for consideration before the learned trial Court. From the pleadings of the parties following issues were

framed :-

"1. Whether the plaintiff is entitled to declaration and mandatory injunction as prayed for?OPP

2. Whether the suit of the plaintiff is not maintainable?OPD

3. Whether the plaintiff has no cause of action to file this suit?

4. Relief."

7. After considering the evidence led by both the parties, the learned trial Court vide judgment and decree dated 03.11.2017, dismissed the suit filed by the appellant.

8. Aggrieved against the said judgment and decree dated 03.11.2017, the appellant preferred an appeal before the lower Appellate Court. The lower Appellate Court, vide judgment and decree dated 23.03.2022, dismissed the appeal.

9. A perusal of the judgment and decree passed by the lower Appellate Court reveals that a specific finding was recorded to the effect that, owing to a break in service during the period from 16.06.1994 to 07.01.1998 exceeding 30 days prior to the appellant's contractual appointment on 01.10.1994, he was not entitled to regularization w.e.f.30.09.1996. It was held that as the policy of regularization dated 23.03.1998 was prospective in nature therefore, service of appellant-plaintiff could not be regularized w.e.f.30.09.1996. It was also held by the lower appellate Court that the cause of action accrued to the appellant in the year 1998 when his services were regularized w.e.f.01.05.1998 as such, the suit in question was also barred by limitation. Relevant extract of the finding recorded by the learned lower Appellate Court is as under:-

"*14- After such hearing and perusal, I may state that in the present case, the plaintiff has sought regularization of his services with effect from 30.09.1996 instead of 01.05.1998 on the basis of policy/instructions dated 23.03.1998 Ex.P5/Ex.D4 issued by the Transport Commissioner, Haryana, Chandigarh to all the General Managers, Haryana Roadways and Flying Squad Office, I.S.B.T. Delhi. On the other hand, the case of the defendants is that there was a break of more than 30 days in contractual service of the plaintiff during the relevant period and therefore, his services were rightly not regularized w.e.f. 30.09.1996. The said policy/instructions is/are relevant to decide the controversy in question and relevant portion thereof is reproduced as under:-*

> *"xxx xxxx The matter regarding the regularization of services of the drivers and conductors working on contractual basis for the last number of years by way of different contracts and by way of different orders of appointments has been under the active consideration with the department. This was in pursuance of the agreement arrived at between the Management of Haryana Roadways and the Haryana Roadways workers union on 16.6.94 by virtue of which it was agreed upon that those drivers and conducts on contractual basis who complete two years service on contractual basis be regularized in service on their respective posts against the available vacant posts.*
>
> *The said agreement had remained enforced from the date of agreement i.e. 16.6.94 till the revocation of agreement i.e. till 8.1.98 and hence only those who fall and become illegible during this period are to be regularized in service subject however to the availability of a vacant post in their respective depots and fulfilling the requisite qualification.*
>
> *Now by virtue of the said agreement and the policy made therein, the following guidelines/instructions are hereby issued for strict compliance of the order under intimation to this office.*
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> *1. All those drivers and conductors working on contractual basis and having been in service and completing two years service on contractual basis during the period from 16.06.1994 to 07.01.1998 be regularized in*

service against the available vacant post in the norm of 1.4 person per vehicle in their respective posts and respective depots. Thereafter their character and antecedents be got verified from the police authorities.

2. The break in service on contractual basis should not exceed more than 30 days at a time. The break in service upto 30 days is to be condoned in accordance with instructions and the guidelines of the Haryana Govt. for regularization of services in its departments with regard to other categories of employees working on daily wages in different departments of Haryana Govt.

3. Those who are not covered under the above said category/categories, but have obtained certain directions from the Hon'ble Courts for their regularisation or absorption in service on regular basis or on temporary or on adhoc basis, their cases be sent to this office with full facts of each such case and the same would be finalised and decided in accordance with the directions of the Hon'ble Courts or further clarification of the orders of the Hon'ble Courts as the case may be. In such circumstances the posts be kept vacant till their cases are finalized.

4. The drivers and conductors on contractual basis against them disciplinary action are pending be not regularized in service till their cases are finalized. In such eventualities posts be kept vacant for such workers till the finalisation of their cases."

15. A perusal of above stated reproduced policy/instructionns shows that all the drivers and conductors working on contractual basis and having been in service and completed two years service on contractual basis during the period from 16.6.1994 to 07.01.1998 were to be regularized in service against the available vacant post in the norm of 1.4 person per vehicle in their respective posts and respective depots and it was clarified that break in service on contractual basis should not exceed more than 30 days at a time. In the present case, the plaintiff has averred that initially he was appointed as driver on 08.12.1993 in Sub Depot, Haryana Roadways, Bhiwani and remained in service for about 10-12 days. Thereafter on 09.06.1994 he was appointed on contract basis but his services were terminated with effect from 16.08.1994. Thereafter

he was again appointed as driver on contractual basis by the defendant no.3 vide endorsement no.3108-RK dated 30.09.1994 w.e.f. 01.10.1994 and his services were regularized w.e.f. 01.05.1998. Thus as per plaintiff himself, there was a break of 30 days at a time in his contractual service whereas as per policy/instructions Ex.P5/D4 break in service should not exceed more than 30 days at a time. Although in his affidavit Ex.PW1/A, the plaintiff has reiterated contents of the suit in question yet, in his crossexamination, he has stated that initially he was appointed on daily wages in Roadways Department, Bhiwani in December 1993 but his services were terminated on 22.12.1993; and that thereafter he was appointed on contract basis at Rewari Depot on 10.06.1994 but after two months, his services were terminated. In view thereof, I am of the considered opinion that there is a break of more than 30 days at a time in contractual services of the plaintiff prior to 01.10.1994 and his service rendered prior to the said period could not have been counted for regularising his services. Furthermore, as per plaintiff himself, the policy Ex.P5/Ex.D4 was launched by the defendants on 23.03.1998. It being so, the said policy could not have been made applicable retrospectively so as to regularise his services with effect from a date prior to the date of launch of the said policy. The said policy nowhere states that it was to be made applicable from a back date. It simply said that services of the contractual employees who had completed two years of service between 16.6.1994 to 7.1.1998 were to be regularised. Once it is so, the claim of the plaintiff for regularisation of his services from a date prior to the date of launch of the said policy is without substance and has rightly been rejected.

16. It also deserves to be mentioned that the order Ex.P4 regularising services of the plaintiff was passed on 04.06.1998. However, he joined on the regular post and kept mum till 10.11.2016. In view thereof, the suit in question was barred by limitation also."

10. Aggrieved against the judgments and decrees passed by the Courts below, the appellant has preferred the present second appeal.

11. Learned counsel appearing on behalf of the appellant submits that the judgments and decrees passed by the Courts below are based on

surmises and conjectures and are liable to be set aside.

12. Learned counsel for the appellant submits that as per the policy dated 23.03.1998, the appellant-plaintiff was entitled to regularization w.e.f. 30.09.1996, as he had completed 2 years of continuous service on that date. It was also contended by the learned counsel that the suit filed by the appellant-plaintiff was within limitation, as the appellant-plaintiff was consistently representing to the respondent prior to his retirement regarding his claim for regularization w.e.f.30.09.1996 instead of 01.05.1998.

13. I have heard the learned counsel appearing on behalf of the appellant and perused the record.

14. The issue involved in the present appeal is whether the appellant-plaintiff is entitled for ante dated regularization in terms of the policy dated 23.03.1998 and whether suit filed by the appellant-plaintiff is barred by limitation.

15. A perusal of the facts of the present case would show that the services of the appellant were regularized vide letter dated 04.06.1998, w.e.f. 01.05.1998. The services of the appellant were regularized in terms of the policy dated 23.03.1998 issued by the respondent. As per the said policy, conductors/drivers were entitled for regularization if they were in service and had completed two years of service during the period from 16.06.1994 to 07.01.1998. It was also clarified that a break in service should not exceed more than 30 days at a time.

16. A perusal of the evidence led by the respondent-defendant would show that there was a break of more than 30 days in the case of the

appellant prior his contractual appointment on 01.10.1994 i.e. during the period from 16.06.1994 to 07.01.1998. As such, the appellant would not be entitled to regularization of his services w.e.f. 30.09.1996. Even otherwise, the policy of regularization dated 23.03.1998 was prospective in nature and as such appellant-plaintiff service could not be regularized w.e.f.30.09.1996.

17. Furthermore, the facts of the present case would also show that the suit was filed by the appellant after almost 17 years from the date of regularization of his services, i.e.04.06.1998. The above said facts would clearly show that the suit filed by the appellant was hopelessly time barred.

18. Hon'ble the Supreme Court, in the case of ***State of Punjab and others Vs. Gurdev Singh and Ashok Kumar, 1991 (4) SCC 1,*** held that the limitation to file a suit for declaration is 03 years, even in service matters. The relevant extract of the judgment is reproduced as under:-

> "10. Hon'ble Supreme Court in State of Punjab and others v. Gurdev Singh and Ashok Kumar, 1991(4) SCC 1 has held that limitation to file a suit for declaration is three years. 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 of 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 Privy Council 270 and Gannon Dunkerley and Co. v. 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 none the less 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 there 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."

19. Hon'ble the Supreme Court while considering the judgment in ***Gurdev Singh (supra)*** in ***State of Punjab Vs. Rajinder Singh, 1999 SCC (L&S) 664*** 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 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."*

20. To the similar effect in the judgment of Hon'ble the Supreme Court in ***State of Punjab and another Vs. Balkaran Singh, 2006 (12) SCC 709,*** wherein it was held that the limitation starts to run from the date the right to sue accrued. The claim has to be raised within the limitation period from the date the right to sue arose. The relevant paragraph of the judgment is reproduced as under:-

> "15. We shall first deal with the first two suits relating to the declaration that the plaintiffs therein are entitled to be placed in the revised scale of pay of Rs.1200-1850/-. The suits filed are for declaration that the order or endorsement dated 13.3.1980 was illegal and void. The suits were filed more than 12 years after the order fixing the revised scale of pay at Rs.940-1850/-. A suit for declaration is governed by Article 58 of the Limitation Act and the period is three years and the terminus au quo is "when the right to sue first accrues".(emphasis supplied) Clearly, the right to seek the relief of declaration that they are entitled to revised scale of pay of Rs.1200-1850/-, accrued to the plaintiffs on 13.3.1980, when the endorsement in that behalf was made by the Director of Agricultural Services and the plaintiffs were denied revised pay at Rs.1200-1850/- and

> were paid only at Rs.940-1850/-. It was not the mere making of an order, but an action that had immediate impact on the right of the plaintiffs to recover a higher salary as per their claim. The cause of action thus clearly arose for the first time. Thus the suit for declaration was clearly barred by limitation going by Article 58 of the Limitation Act. The fact that some other officer had been given a decree for the enhanced revised scale, does not furnish the plaintiffs in the first two suits with a fresh cause of action. It is well settled that the time does not stop to run once it has started to run. Therefore, the reliance placed on the decree in Civil Suit No. 461 of 1991 had absolutely no relevance on this question. Strictly speaking, Civil Suit No. 461 of 1991 also ought not to have been decreed since that suit was clearly barred by limitation, since the order sought to be challenged in that suit of 1991 was also the order dated 13.3.1980. But in view of the decree passed therein, it is not for us now to go into the correctness or otherwise of the decision rendered therein. Suffice it to say that the said decision cannot give the plaintiffs a fresh cause of action. The time started to run when the right to sue first accrued to the plaintiff and that first accrual was clearly on 13.3.1980 and on expiry of 3 years therefrom, the suit for declaration became barred."

21. Co-ordinate Benches of this Court has also taken similar view in ***RSA No.2128 of 1991 titled as 'State of Punjab and others Vs. Balwinder Singh' decided on 09.01.2024, RSA No.2276 of 1999 titled 'State of Punjab and others Vs. Mangal Singh' decided on 09.01.2024, RSA No.2964 of 2014 titled 'State of Haryana and others Vs. Banwari Lal' decided on 28.05.2024, Ram Mehar Singh Vs. The State of Haryana and others, reported as 2024 Vol 6 SLR 129*** *and* ***RSA-501 of 1994 titled 'State of Haryana and others Vs. Harcharan Kaur', decided on 30.04.2024.***.

22. In the present case, the appellant has filed a suit for declaration after a period of 17 years. Insofar as the regularization of appellant-plaintiff is concerned, the right was established in regard to regularization in the year 1998, when the services of the appellant-plaintiff was regularized w.e.f

01.05.1998 vide letter dated 04.06.1998. Right to sue accrued in the year 1998. As such, the suit filed by the appellant for declaration was hopelessly time barred.

23. With regard to the contention raised by the appellant-plaintiff that he was consistently making representations to the respondent prior to his retirement in respect of his ante dated regularization is concerned, it is well settled law that mere making representations does not condone the period of limitation.

24. No substantial question of law arises for consideration in the present appeal.

25. In view of above, there is no infirmity or illegality in the judgments and decrees passed by the learned Courts below. Accordingly, the present appeal is dismissed.

(DEEPINDER SINGH NALWA)
JUDGE

21.05.2025
Rimpal

Whether speaking/reasoned Yes/No
Whether Reportable : Yes/No