

(2014) 12 P&H CK 0060
In the Punjab And Haryana At Chandigarh
Case No : RSA No. 5651 of 2014 (O and M)

Jagtar Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 15-12-2014

Acts Referred:

Citation : (2015) 178 PLR 426 : (2014) 1 RCR(Rent) 960

Hon'ble Judges : Jaswant Singh, J

Bench : Single Bench

Advocate : S.C. Arora, Advocate for the Appellant;

Final Decision : Dismissed

Judgement

Jaswant Singh, J.

CM No. 14592-C of 2014

1. By way of the instant CM permission is sought for placing on record copy of the Order dated 10.01.2008 as Annexure P-1 passed in CR No. 2020 of 2007.

Allowed as prayed for subject to all just exceptions and the said order is taken on record as Annexure P-1.

RSA No. 5651 of 2014

Defendant is in second appeal, aggrieved against the concurrent findings returned by the Courts below whereby the suit for recovery filed by the respondent-State of Punjab of Rs. 30,482/- along with interest has been allowed.

In brief, facts of the case are that defendant joined the service as Forest Guard in the department of Forest, Government of Punjab on 18.7.1970 and superannuated as Deputy Ranger on 31.3.1998 from Forest Division, Sri Mukatsar Sahib. During service, a show cause notice was served upon the defendant/appellant herein for loss caused by him due to illegal cutting of trees, which was not replied by the appellant. It was further pleaded in the plaint that

despite intimation, the defendant/appellant did not come for personal hearing and thus, vide order dated 16.5.1996 the defendant was found guilty and consequently penalty of Rs. 23,182/- was levied upon the appellant. Thereafter, the Conservator of Forest, Patiala vide its office letter dated 9.1.1998 issued another show cause notice to the defendant/appellant for recovery of outstanding amount pending against contractors. The defendant appeared and got his statement recorded but after considering the record, the Conservator of Forest, vide order dated 20.03.1998 imposed recovery of amount of Rs. 7300/- outstanding against the contractor namely Sukhdev Singh. Thus, on the basis of these two orders, which were alleged to have never been challenged, the present suit for recovery of Rs. 30,482/- was filed.

2. Upon notice, the defendant/appellant filed his written statement, whereby he had denied all the averments and had also stated that no recovery should be made from retiree without his or her consent under the Rules and if there is no consent, the suit has to be filed by the department for recovery within a period of 4 years from the date of accrual of cause of action. Thus, prayer was made for dismissal of the suit.

3. Replication was filed wherein the entire contents of the plaint were reiterated and those of the written statement were denied. From the pleadings of the parties issues were framed. Both sides lead their evidence and after appreciating their evidence learned Civil Judge(Sr. Divn.) Sri Mukatsar Sahib vide its judgment and decree dated 18.2.2013 decreed the suit of the plaintiff and the findings thereof were affirmed by the learned Additional District Judge, Sri Mukatsar Sahib vide judgment and decree dated 4.8.2014.

4. Learned Counsel for the appellant has argued that the findings recorded by the courts below are contrary to the provisions of law and facts and as such are liable to be set aside. It was further contended that the learned Courts below have wrongly decreed the suit of the plaintiff for recovery. The plaintiff/respondent had failed to prove the case and thus liability to pay the suit amount has wrongly been fastened upon the defendant-appellant. It was finally argued that the learned Courts below have not considered the fact that the suit itself is barred by time and thus, on this ground prayer was made for setting aside impugned judgments and decrees.

5. After hearing learned Counsel for the appellant and perusing the paper book, this Court is of the considered view that the present appeal is devoid of any merit and the same deserves to be dismissed.

6. Admittedly, the respondent/plaintiff had sought recovery of the amount of Rs. 30,482/- on the basis of two orders dated 16.5.1996 (P-5) and 20.03.1998 (P-7). It is further admitted fact that the first order was passed with regard to illegal cutting of trees and the second order was passed with regard to amount due from a contractor namely Sukhdev Singh. It is not in dispute that the said orders have not been challenged till date and same have attained finality. It is

further apparent from the record that the defendant had filed a suit for declaration to the effect that he is entitled to retrial benefits and had also sought mandatory injunction for directing the State of Punjab and others to release his pensionary benefits. The said suit was decreed in his favour vide judgment and decree Ex. D-1 and D-2. As per the said judgment, the learned Civil Judge (Sr. Divn.), Mukatsar Sahib had held that if any amount is to be recovered from a retiree, the department has a remedy to file a separate suit for recovery. In an execution filed by the present appellant/defendant, the learned Civil Judge (Sr. Divn.) passed an order dated 7.3.2007 (P-9) vide which the execution application was dismissed as all other amounts stood paid and the decree was held to be satisfied. However, in a Civil Revision filed by the present appellant bearing CR No. 2020 of 2007, this Court vide its order dated 10.01.2008 (P-10) directed the executing Court for deciding the application afresh in accordance with law. In pursuance of the said order the Executing Court directed the state to make payment of Rs. 51,696/-. Admittedly, the said amount stood paid vide two cheques.

7. Thus, the perusal of the facts as mentioned above, makes it abundantly clear that the defendant/appellant (herein) has accepted the orders passed by the concerned Authorities because these orders were never challenged by him under the statutory provisions of law. Perusal of his cross examination as DW-1 would reveal that the defendant has not been able to withstand the rigors of cross examination and has indirectly admitted all the facts as set out in the plaint. Thus, the orders Ex. P-5 and P-7 have rightly been upheld by the courts below and suit on the basis of the said order has rightly been decreed.

8. As far as the considering the provisions of Civil Services Rules as well as the factum of the suit being barred by limitation is concerned, this Court is of the opinion that these two arguments are also without any merit. A bare perusal of the Civil Services Rules would reveal that it is nowhere mentioned that the State cannot file a suit for recovery of the said amount, however, the only bar, as is evident from the relevant provisions is that the amount cannot be recovered from the pension of an employee. Thus, there is no bar under the CSR from filing the suit for recovery against the employee beyond the period of four years. As far as the plea of limitation is concerned, the facts speak for themselves. It is evident that defendant/appellant had filed a suit for declaration with a consequential relief of mandatory injunction which ultimately culminated on 10.01.2008, when the Civil Revision was allowed and thereafter the payment was made by the appellant which also included the amount which the plaintiff/respondent State intends to recover through present suit. As such, the learned Courts below have rightly held that the present which was filed on 8.6.2010 as well within limitation and hence no infirmity or illegality in the orders passed by the courts below can be found. In view of the above, finding no question of law much less substantial question of law arising for determination in the present second appeal, the same is hereby dismissed.