
(2010) 05 P&H CK 0244
In the Punjab And Haryana At Chandigarh

Punjab State Electricity Board

APPELLANT

Vs

Varinder Kumar Gupta

RESPONDENT

Date of Decision : 06-05-2010

Acts Referred:

Limitation Act, 1963 — Section 3

Citation : (2010) 05 P&H CK 0244

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—Plaintiff Punjab State Electricity Board was partially successful in the trial court, but has been non-suited by the lower appellate court and being aggrieved thereby, the plaintiff has filed the instant second appeal.

2. Defendant-respondent Varinder Kumar Gupta was employed as Section Officer/Junior Engineer with the plaintiff. The defendant absented from duty since 18.12.1975 onwards. The defendant filed civil suit No. 8 of 25.01.1996, which was decreed by the trial court vide judgment and decree dated 19.08.1998 holding the defendant herein to be still in service. The plaintiff herein was given right to dismiss or suspend the defendant from service as per rules immediately after issuing posting orders to the defendant herein. The said judgment and decree were upheld up to Hon"ble Apex Court. The defendant herein then joined duty on 27.11.2000 and retired on 31.08.2004. In the meanwhile, the plaintiff served the defendant with charge-sheet regarding his absence from duty and regarding non-return of material and regarding some other charges. Inquiry report dated 23.12.2005 was submitted by the Inquiry Officer after retirement of the defendant, upholding the charges against the defendant. However, since the defendant had already retired, it would have been redundant to impose punishment of dismissal from service or stoppage of increments. Consequently, the punishing authority decided that the suit be filed against the defendant for recovery of the amount of the material, which was not returned by the

defendant. The plaintiff pleaded that the amount of the material not returned by the defendant in the year 1975 was Rs. 59,073.34 paise, to which the plaintiff was entitled with interest @ 18% per annum or in the alternative, the present value of the said material, when the suit was filed, was claimed to be Rs. 3,03,498.93 paise, which amount was claimed by the plaintiff in the suit. The defendant resisted the suit and controverted the plaintiff's allegations. It was also pleaded that no law permits recovery claim for material supplied before 1976. Suit of the plaintiff is not within limitation. Averments of the plaintiff were controverted.

3. Learned Civil Judge (Junior Division), Bathinda, vide judgment and decree dated 31.05.2008, partly decreed the plaintiff's suit for recovery of Rs. 59,073.34 paise with interest @ 6% per annum from the due date till realization. However, first appeal preferred by the defendant against judgment and decree of the trial court has been allowed by learned District Judge, Bathinda, vide judgment and decree dated 25.02.2009 and suit filed by the plaintiff stands dismissed. Feeling aggrieved, plaintiff has preferred the instant second appeal.

4. I have heard learned Counsel for the appellant and perused the case file.

5. Suit filed by the plaintiff has been dismissed to be time barred by the lower appellate court and also on merits.

6. Learned Counsel for the appellant contended that the suit is not barred by limitation, as cause of action in the suit arose, when Inquiry Report dated 23.12.2005 was submitted and since prior to it, the plaintiff had retired, it was, therefore, decided to file recovery suit, as punishment could not be imposed on the defendant on account of his retirement during inquiry proceedings and therefore, suit filed on 24.02.2006 is within limitation. It was also contended that no issue regarding bar of limitation was framed.

7. I have carefully considered the aforesaid contentions, but find no merit therein. The defendant specifically pleaded in the written statement that the suit is barred by limitation. Consequently, non-framing of issue on this plea of the defendant becomes immaterial. In addition thereto, Section 3 of the Limitation Act lays down that even if bar of limitation is not pleaded as defence by the defendant, the suit, if time barred, has to be dismissed as such. For this reason as well, non-framing of issue regarding bar of limitation would not make any difference.

8. Cause of action for filing the suit arose when the defendant absented from duty since 18.12.1975, because it was at that juncture that the material remained with the defendant and was not returned by him. Consequently, limitation period commenced on 18.12.1975 and the suit filed on 24.02.2006 i.e. more than 30 years after the accrual of cause of action is manifestly barred by limitation because limitation period for filing the suit by the plaintiff was only three years. It may be added that the defendant filed suit No. 8 dated 25.01.1996. The said suit was filed more than 20 years after the defendant had

absented from duty. Consequently, the present suit for recovery had become barred by limitation much before the filing of the said suit by the defendant. Any liberty granted to the plaintiff in the said suit would not bring the suit within limitation.

9. It is also to be mentioned that in the previous suit instituted by the defendant herein, liberty was given to the plaintiff herein to dismiss or suspend the defendant after giving him posting orders. No liberty was given to initiate inquiry regarding non-return of the material. It is correct that disciplinary inquiry conducted by the plaintiff into charge of non-return of material could legally be conducted because the defendant rejoined service on 27.11.2000. However, initiation or conclusion of the said inquiry was not the starting point of limitation and the said inquiry would not bring the suit within limitation, which had already become time barred long before the initiation of the inquiry. Moreover, plaintiff's plea that imposition of any punishment pursuant to departmental inquiry had become redundant on account of retirement of the defendant during inquiry is also legally unsustainable because in view of Rule 2.2(b) of the Punjab Civil Services Rules, Volume II, Part I, the inquiry, which had been initiated while the defendant was still in service, could be taken to its logical conclusion and even recovery of amount of the loss caused by the defendant could be ordered in the disciplinary proceedings and punishment of pension cut could also be imposed on the defendant. However, the plaintiff did not choose to tread the said path. Be that as it may, the fact remains that the suit is badly barred by limitation.

10. Learned Counsel for the appellant contended that remedy of filing suit for recovery is not barred by Rule 2.2 (b) of the Punjab Civil Services Rules and suit for recovery is maintainable. There is no quarrel with this proposition. The plaintiff had the option to file suit for recovery of amount due to the plaintiff, but the plaintiff cannot succeed in the suit because the suit is manifestly barred by limitation. There is no illegality in the finding of the lower appellate court to this effect.

11. For the reasons recorded herein above, I find no merit in the instant second appeal. The plaintiff has been rightly non-suited by the lower appellate court because the suit was badly barred by limitation. No question of law, much less substantial question of law, arises for determination in the instant second appeal. The appeal is accordingly dismissed in limine.