
(2008) 02 P&H CK 0226
In the Punjab And Haryana At Chandigarh

Yog Raj Mittal, since deceased through his legal
representatives

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 26-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2008) 02 P&H CK 0226

Hon'ble Judges : K.C. Puri, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K.C. Puri, J.—Since common questions of fact and law are involved in this Regular Second Appeal and the connected Regular Second Appeal No. 2165 of 1986, titled Yog Raj Mittal, since deceased through his legal representatives v. State of Punjab and Ors., therefore, both these Regular Second Appeals are being disposed of by this common judgment. Facts have, however, been taken from Regular Second Appeal No. 2164 of 1986.

2. The plaintiff filed a suit for a declaration to the effect that order dated 12.8.1976 issued by defendant No. 3 imposing penalty of withholding of two increments with future effect and recovery of Rs. 215/75P and further order of defendant No. 2 dated 26.10.1978 vide which penalties imposed upon the plaintiff were confirmed, were illegal, void, ultra vires, arbitrary, unconstitutional, against the rules and instructions, against the principles of natural justice and not binding upon him and that he is entitled to all the arrears of increments with all consequential reliefs.

3. The plaintiff averred that he was charge-sheeted under Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 (in short the Rules) vide letter dated 3.2.1976 of defendant No. 3. He submitted his reply to the charge sheet which was considered unsatisfactory and defendant No. 3 imposed the said penalty. He preferred an appeal against the impugned punishment order which

was also rejected by defendant No. 2. He termed these orders as nonspeaking. He further pleaded that no inquiry was conducted before imposing punishments; that the procedure under Rule 8 of the Rules was not adopted; that no show cause notice was served and no personal hearing was given before imposing these penalties; that with-holding of increments with future effect was not provided in the rules and cannot be imposed and that the Punishing Authority had acted as per comments of the Lower Officer and the same were not disclosed to him.

4. The defendants contested the suit and raised some preliminary objections. On merits, it was pleaded that lenient view was taken by resorting to Section 5(iv) read with Rule 10 of the Rules. Minor penalty was imposed after taking into consideration the reply of the plaintiff to the charge-sheet.

5. On the pleadings of the parties, the following issues were framed by the learned trial Court:

1. Whether the order No. 11540 dated 12.8.76 is null and void and not binding on the rights of the plaintiff? OPP.

2. Whether the plaintiff is entitled to Rs. 215.75 as alleged? OPP.

3. Whether this Court has no jurisdiction to entertain and try this suit? OPD.

4. Whether the suit is time barred? OPD.

5. Whether proper court fee has not been affixed on the plaint? OPD.

6. Whether the notice u/s 80 CPC is not legal ? OPD.

6-A. Whether order No. 261-78/JS/SK12/3(5)76245 dated 26.10.78 of the defendant No. 2 is null and void and is not binding on the rights of the plaintiff as alleged?OPP.

7. Relief.

6. The learned trial Court decided all the issues in favour of the plaintiff and against the defendants. As a result of said findings, the suit of the plaintiff was decreed vide judgment and decree dated 16.4.1985.

7. Feeling aggrieved, the defendants filed an appeal which was accepted by Mr.A.S.Sodhi, the then learned Additional District Judge, Faridkot vide impugned judgment and decree dated 28.4.1986.

8. Feeling dis-satisfied with the above-said judgment and decree, the appellant has preferred the instant appeal.

9. I have heard arguments of counsel for the parties and have gone through the record of the case.

10. From the submissions made by both sides, the following substantial questions of law are formulated:

1. Whether penalty of stoppage of two increments with cumulative effect is a major penalty and cannot be imposed without holding an inquiry as envisaged under Rules 8 and 9 of the Rules?

2. Whether stoppage of increments gives a recurring cause of action and the suit is within limitation on that count?

11. The facts are admitted that the plaintiff was charge-sheeted under Rule 8 of the Rules vide letter No. 1589 dated 3.2.1976 for major penalty. The plaintiff submitted his reply which was considered as unsatisfactory and defendant No. 3 imposed penalty of stoppage of two increments of the plaintiff with cumulative effect and future penalty for recovery of Rs. 215.75P vide order No. 11540 dated 12.8.1976. The plaintiff preferred an appeal against the said order which was rejected by defendant No. 2 vide order dated 26.10.1978.

12. Mr. Yatinder Sharma, Deputy Advocate General, Punjab was fair enough to concede that stoppage of increments with cumulative effect is a major penalty and cannot be imposed without departmental inquiry. Otherwise also, the Apex Court in *Kulwant Singh Gill v. State of Punjab* 1991(2) SCT 30 (SC) has held that stoppage of two increments with cumulative effect falls within the meaning of 5(v) and regular inquiry is a must for imposing penalty. Without inquiry, no punishment of stoppage of increments with cumulative effect can be ordered.

13. So, in view of above discussion, the first substantial question of law formulated above is answered in favour of the plaintiff/appellant.

14. The main stress laid down by Mr. Yatinder Sharma, Deputy Advocate General, Punjab is that suit is hopelessly time barred. It is submitted that the impugned order was passed on 12.8.1976 and the suit was filed on 7.5.1983. Limitation for filing the suit for declaration is three years. To support this contention, Mr. Jatinder Sharma, has relied upon authority *Guru Dutt v. Pepsu Road Transport Corporation* 2001(3) SCT 1066.

15. In reply to the above noted submission, Learned Counsel for the appellant has submitted that stoppage of increment gives a recurring cause of action in favour of the plaintiff and the same can be challenged on each month on deduction of pay. To fortify this contention, Learned Counsel for the appellant has relied upon authority *Malkiat Singh v. State of Haryana* 2008(1) RSJ 141.

16. I have carefully gone through the record of the case and the authorities cited by both sides regarding limitation.

17. In authority in *Guru Dutt's* case (supra), a single Bench of our High Court has not considered the effect of drawing salary every month. In the later authority in *Malkiat Singh's* case (supra), the effect of reducing the pay every month has been considered and it has been held that every month, reduction of salary gives a fresh cause of action. So far as order of punishment is concerned, it has been held that right to claim wages arises at the end of every month because wages are payable monthly. It continues to arise to a servant upto the

age of superannuation. A right to salary cannot be interrupted by a void order. There has to be a valid order in order to deprive the Government servant of his right to claim salary. If such an order is passed contrary to the provisions of rules, it could be an order which could be termed as illegal and invalid. An employee can ignore such an order. He need not secure declaration if such an order is void. He can enforce his claim of salary which became due to him preceding the date of the institution of suit any time.

18. As discussed above, the impugned orders are held illegal and void being passed without any inquiry and being contrary to the authority in Kulwant Singh's case (supra). In authorities Malkiat Singh and Guru Dutt cases (supra), authority reported as State of Punjab and Others Vs. Gurdev Singh, has been considered. In authority Malkiat Singh's case (supra), taking the view on the point of limitation, the arrears were restricted to the extent of 38 months preceding the date of filing the suit.

19. So, the second substantial question of law formulated above stands answered in favour of the plaintiff/appellant to the extent mentioned above.

20. For the reasons recorded above, the appeals filed by the plaintiff/appellant succeed and are hereby allowed. Accordingly, the impugned judgments and decrees passed by the first Appellate Court stand set aside and the suit of the plaintiff/appellant is decreed declaring the impugned orders for with-holding two increments with cumulative effect and ordering recovery of Rs. 215.75P as illegal, null and void. The plaintiff/appellant is entitled to claim all the past benefits admissible under the Rules. His arrears shall be restricted to the extent of 38 months preceding the date of filing the suit.

21. Decree sheets be prepared and the files of the Courts below be returned after due compliance.

22. This file be consigned to the Record Room.