

Before N.K. Agrawal, J

THE STATE OF PUNJAB & ANOTHER,—Appellants

versus

GULZAR SINGH,—Respondent

RSA 1033 of 1991

27th March, 1998

Code of Civil Procedure, 1908—Limitation Act, 1963—Suit for reinstatement filed 26 years after dismissal order—Plea of plaintiff that he had no knowledge of dismissal order not tenable especially as he was refused permission to join duty—Suit held to be time barred.

Held that since the plaintiff has admitted in clear words that he was not permitted to join duty, it is difficult to believe that he did not have the information or the knowledge about the order of dismissal. Nothing has been said by him as to why he waited for a period as long as 26 years after the order of dismissal and after he was refused permission thereafter, to join his duty. No prudent man would wait for 26 years after he is refused permission to join duty and is not paid his salary and allowances. Therefore, the plea raised by learned counsel for the State is found to have merit and is accepted. The plea put-forward by Shri Khehar on behalf of the plaintiff that the plaintiff had no knowledge about the order of dismissal and that the case of Dalbir Singh decided on similar facts should be followed, has no merit. In the result, the State's appeal succeeds and the plaintiff's suit is held to be time barred.

(Paras 13 & 14)

R.S. Virk, A.A.G., Punjab *for the Appellant*

J.S. Khehar, Sr. Advocate with N.S. Gill, Advocate *for the Respondent.*

Judgment

N.K. Agrawal, J.

(1) These are two appeals, one (R.S.A. No. 1033 of 1991) filed by the State of Punjab and the other (R.S.A. No. 206 of 1992) filed by the plaintiff.

(2) Plaintiff, Gulzar Singh, filed a Civil suit in the Court of Sub-Judge 1st Class, Sangrur, on March 17, 1986 seeking declaration to the effect that he continued to be Head Constable of Police till attaining the age of superannuation and was entitled to the pay, powers and privileges of that post. He had joined as police Constable in District Ambala, in the then State of Punjab, on May 4, 1948. He was promoted as Head Constable on April 8, 1955. He was, thereafter, posted in District Bhatinda. He was shown as absent from duty and was placed under suspension after the Superintendent of police, who was displeased with him on a Criminal case, under Section 7 of Pepsu Essential Services Maintenance Act. Certain other police officials, including Head Constable Dalbir Singh, were also implicated in the criminal case. One more criminal case (F.I.R. No. 150, dated October 25, 1957) was filed against the plaintiff at P.S. Kotwali, Bhatinda under Sections 26, 30 and 33 of the Pepsu Act (No. 1 of 1953). The petitioner was acquitted of the charge in the first criminal case by the Magistrate 1st Class, Faridkot, However, he was, in the second case, convicted and sentenced to simple imprisonment for six months by that Magistrate on August 28, 1958. The petitioner went in successive appeals before the Sessions Court, High Court and the Supreme Court. The sentence came to be finally reduced to the imprisonment already undergone by him. The order of the Supreme Court, maintaining sentence, was passed on 6th February, 1962. The plaintiff was, in the meantime, transferred to District Sangrur. The Superintendent of Police, Sangrur, passed order on April 30, 1959, dismissing the plaintiff from service with effect from December 31, 1957. The plaintiff alleged in his plaint that the order of dismissal was never served upon him nor was promulgated in the police gazette, as required under the Punjab Police Rules.

(3) Plaintiff's suit was partly decreed in his favour by the learned Sub-Judge, Sangrur, on November 17, 1988. The learned Sub-Judge held that the order of dismissal was illegal and void inasmuch as the petitioner was neither given a show-cause notice nor was afforded any opportunity of hearing before the order of

dismissal was passed. The plea of limitation raised by the State of Punjab was also rejected. However, the plaintiff was held to be not entitled to the pay and allowances and other benefits for the period after April 30, 1959 till the date of decree on the ground that he did not report for duty after the order of dismissal. The period was required to be considered as the period of leave of the kind due to the plaintiff.

(4) Plaintiff as well as the defendants went in appeal. The plaintiff felt aggrieved by the order of the learned Sub-Judge whereby period of absence from April 30, 1959 to the date of decree was treated to be the period of leave of the kind due. The defendants went in appeal against the order of reinstatement. Both the appeals were dismissed by the learned Additional District Judge, Sangrur on January 31, 1991.

(5) In the appeal filed by the State, the only challenge is against the finding of the learned Sub-Judge and the learned Additional District Judge that the suit was not barred by limitation. Shri R.S. Virk, learned Assistant Advocate General, Punjab, has contended that the plaintiff was well aware of his dismissal and, therefore, there was no reason for the plaintiff to sleep over the matter for a long period of 26 years. The order of dismissal was passed by the Superintendent of Police, Sangrur, on April 30, 1959 and the suit came to be filed by the plaintiff on March 17, 1986. The plaintiff, in his notice sent to the State of Punjab under Section 80, Code of Civil Procedure, alleged that he was not allowed to join duty nor was paid any salary after August 28, 1958. It would, thus, mean that the plaintiff was aware of the order of dismissal, otherwise he would have represented against the refusal by the superior police officials from granting permission to him to join duty. It is also pointed out that the copy of the order of dismissal was sent by the Superintendent of Police, Sangrur, to the plaintiff,—*vide* endorsement dated May 16, 1959. Copy of the order of dismissal (Ex. D-2) is available on the file of the trial Court. Shri Virk has also argued that even if the order of dismissal was void, illegal and non est, the period of limitation would still be relevant in the light of the decision of Supreme Court in *State of Punjab and others vs. Gurdev Singh and another*, (1). The learned trial Court as well as the Appellate Court placed reliance on a decision dated July 22, 1986 of this Court in the case of *Dalbir Singh vs. State of Punjab* in R.S.A. No. 1313 of 1985. Copy of the said decision (Ex. P-7) was

(1) AIR 1991 SC 2219

produced by the plaintiff before the trial Court. Since the case of Dalbir Singh was also a case of dismissal because of the criminal case, a civil suit was filed by Dalbir Singh also and he was ordered to be reinstated, The matter ultimately came in second appeal before this Court and the order of dismissal was held to be void and illegal. The plea regarding limitation was raised in that case also but was rejected on the ground that in a case where the order was void and illegal, the period of limitation would not be attracted.

(6) Shri J.S. Khehar, learned Senior Counsel for the plaintiff, has supported the order of reinstatement of the plaintiff with the plea that the order of dismissal had been passed without affording any opportunity of hearing to the delinquent. No show-cause notice was issued to the plaintiff before passing the order of dismissal. It is pointed out that Rule 16.2 (2) of the Punjab Police Rules requires that where an enrolled police officer is sentenced to rigorous imprisonment exceeding one month, he shall be punished, if such sentence is not quashed on appeal or revision. If an Officer is sentenced by criminal Court to a punishment of fine or simple imprisonment, he may be dismissed from service, if he failed to file an appeal within the prescribed period. It is further laid down that final departmental orders in such cases shall be postponed until the appeal or the revision is decided or the period allowed for filing an appeal or revision expired. It is contended by Shri Khehar that the plaintiff was acquitted of the charge in the first criminal case against him and he was not reinstated in service thereafter. However, plaintiff was convicted and sentenced in the second criminal case on August 28, 1958. It was necessary for the Superintendent of Police to inform the plaintiff about the order of dismissal passed on April 30, 1959. In the absence of any notice to the plaintiff, evidencing information to him about the aforesaid order, the plaintiff cannot be said to have the knowledge about the said order of dismissal and, therefore, he was entitled to file civil suit in the year 1986. It is contended that in the absence of any material on record to show that the plaintiff had the knowledge about the order of dismissal, the period of limitation would not start from the date of the order of dismissal. Shri Khehar has also argued that since the case of Dalbir Singh was similar in nature, same view must be taken in the case of the present plaintiff and he should also be reinstated in service.

(7) The plea raised by the plaintiff that the order of dismissal was not conveyed to him, is required to be examined in the light of

the evidence on record. From the copy of the order of dismissal (Ex. D-2), it appears that a copy of the order was also endorsed on May 6, 1959 to the plaintiff. It may be seen that the Inspector General of Police, Punjab, informed the plaintiff by letter dated May 22, 1978 (Ex. P-1) that his letters dated July 28, 1977 and September 27, 1977, seeking reinstatement in service, have been filed and no action can be taken any more. Thereafter, by endorsement No. 652/F, dated January 15, 1960 (Ex. P-2), plaintiff was again informed that subsistence allowance till the date of dismissal, as claimed, would be paid as soon as the bill was passed by the Accountant General of Punjab. This letter was sent to the plaintiff, Gulzar Singh, at his home address. Plaintiff has, in his evidence before the trial Court, admitted to have received the letter dated May 22, 1978, Ex. P-1. It would, thus, appear that though, there is no proof of personal service of the order of dismissal on the plaintiff, the aforesaid letters, Ex. P-1 and P-2, do indicate that copies of the order were sent at the home address of the plaintiff.

(8) Para 16 of the plaint, filed by the plaintiff, is relevant so as to show the cause of action. It reads as under :—

“That the cause of action arose to the plaintiff on each day that passed and now starting from 31.12.1957 and from the date from refusal to reinstate the plaintiff in service, since the dismissal order is null, void, illegal and there is no limitation for setting aside the same.”

(9) It would, thus, appear that the plaintiff has admitted that the cause of action arose on and from December 31, 1957 and also on each day on which he was refused reinstatement in service.

(10) Similarly, Para 7 of the notice, dated March 29, 1985, sent by the plaintiff to the State of Rajasthan, under Section 80, Code of Civil Procedure, (Ex. p-3), reads as under :—

“That the cause of action accrued from the date of dismissal order and subsequent refusal to reinstate my client in service.”

(11) It would, thus, appear that the plaintiff, on the basis of his own averments made in the plaint and notice as well as his plea in his statement before the trial Court, admitted and claimed that he was not allowed to join duty after the criminal case was finally decided by the Supreme Court on February 6, 1962. It is strange that he was not permitted to join his duties and was not

also paid salary from August 28, 1958 onwards and he did not take any action by filing any representation or by any other measure. There was no reason to wait upto 1986. Plaintiff has also stated in paragraph 3 of his notice, under Section 80, Code of Civil Procedure, that after he was not permitted to join duty, he made "a number of representations to the high officials but no heed was paid". No such representation has been brought on record. The plea of the plaintiff cannot, therefore, be accepted that he had not knowledge about the order of dismissal and, therefore, he came to the civil court to file a civil suit for seeking reinstatement in service in the year 1986.

(12) The case of Dalbir Singh, which is said to be similar in nature with regard to the criminal case as well as the order of dismissal, cannot help the plaintiff any more in the light of the decision of the Supreme Court in *State of Punjab and others vs. Gurdev Singh* (Supra). Though, it is correct that the case of Dalbir Singh has been decided in his favour by this Court in R.S.A. No. 1313 of 1985, the said decision would not be of any help to the plaintiff. While deciding the case of Dalbir Singh, this Court placed reliance on the decision of the Supreme Court in *State of Madhya Pradesh vs. Syed Quamarali* (2). In *State of Punjab vs. Gurdev Singh* (Supra), the Supreme Court took notice of its earlier decision in *State of Madhya Pradesh vs. Syed Quamarali* (Supra) and held as under with regard to the observations made in that case :—

"These observations are of little assistance to the plaintiffs in the present case. This Court only emphasized that since the order of dismissal was invalid being contrary to para 241 of the Berar Police Regulations, it need not be set aside. But it may be noted that Syed Quamarali brought the suit within the period of limitation. He was dismissed on 22 December, 1945. His appeal against the order of dismissal was rejected by the Provincial Government on 9 April, 1947. He brought the suit which has given rise to the appeal before the Supreme Court on 8 December, 1952. The right to sue accrued to Syed Qamarali when the Provincial Government rejected his appeal affirming the original order of dismissal and the suit was brought within six years from the date as prescribed under Article 120 of the Limitation Act, 1908."

(13) Thus, the decision rendered by this Court in the case of Dalbir Singh cannot be any more followed in the light of the decision of the Supreme Court in *State of Punjab vs. Gurdev Singh* (Supra). Moreover, in the case of Dalbir Singh, facts were not exactly similar but slightly different. He was suspended from service on October 17, 1957. He was dismissed on September 3, 1958 and he filed civil suit in the Court of Sub Judge. Bhatinda, on September 4, 1978. The question of limitation was raised by the State of Punjab in the civil suit but the plea was dismissed on the ground that in a case where the order of dismissal was void, illegal and non est, the plea of limitation would not debar the plaintiff-delinquent from challenging the order. It is, however, not clear as to what plea was taken by Dalbir Singh in his case about the knowledge of the order of dismissal. Therefore, the case of Dalbir Singh would not help the plaintiff so far as his knowledge of the order of dismissal is concerned. Each case is to be decided on its own facts. Since the plaintiff Gulzar Singh has admitted in clear words that he was not permitted to join duty, it is difficult to believe that he did not have the information or the knowledge about the order of dismissal. Nothing has been said by him as to why he waited for a period as long as 26 years after the order of dismissal and after he was refused permission thereafter, to join his duty. No prudent man would wait for 26 years after he is refused permission to join duty and is not paid his salary and allowance. Therefore, the plea raised by learned counsel for the State is found to have merit and is accepted. The plea put-forward by Shri Khehar, on behalf of the plaintiff, that the plaintiff had no knowledge about the order of dismissal and that the case of Dalbir Singh decided on similar facts should be followed, has no merit.

(14) In the result, the State's Appeal (R.S.A. No. 1033 of 1991) succeeds and the plaintiff's suit is held to be time barred. The orders of the learned Sub Judge dated November 17, 1988 and the appellate order of the learned Additional District Judge dated January 31, 1991 are set aside.

(15) The contention in the plaintiff's appeal (R.S.A. No. 206 of 1992) is also found to have no force. The learned Sub Judge, while declining the payment of arrears of salary and allowances to the plaintiff, has rightly taken the view that the plaintiff did not challenge the action of the defendants, when he was not permitted to join his duty in the year 1958. Even if the order of dismissal had not been served on the plaintiff, he went to his superior officers to

join duty and since he was not permitted to do so, he shall be presumed to have the knowledge of dismissal from service. Even if the order was not served on him, he ought to have found the reason due to which he was not permitted to join the duty. As has been seen earlier, the plaintiff, after not having been permitted to join duty, made representations to the higher authorities but no such document has been produced in evidence. In these circumstances, the order of the learned Sub Judge as well as the order of learned Appellate Court are found to be correct and need no interference. The learned Sub Judge has rightly held that the period after April 30, 1959 till the date of decree shall be considered as the period of leave of the kind due to the plaintiff. The plea, raised by learned counsel for the plaintiff that the plaintiff was illegally refused permission to join duty, has not force in the absence of any material on record to show that he did report for duty. Neither any specific date or month has been mentioned in the pleadings nor the name of the officers who refused permission to the plaintiff to join duty has been given.

(16) In the result, the plaintiff's appeal is found to have no force and is dismissed.

J.S.T.

Before R.S. Mongia, Sat Pal and S.S. Sudhalkar, JJ

LAL CHAND,—*Petitioner*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

CWP 1160 of 1995

28th May, 1998

Constitution of India, 1950—Arts. 226, 227, 243-O, 243-ZG and 368—Election to Panchayats/Municipalities—Judicial Review—Basic structure—Bar contained in Art. 243-O, 243-ZG does not effect High Court's power under Arts, 226/227—Expression “notwithstanding anything in the Constitution” used in Arts. 243-O and 243-ZG has to be read down as not ousting the jurisdiction of the High Court to entertain a petition challenging an election.