

*Before Rajive Bhalla, J.*

**MAKHAN SINGH,—Appellant**

*versus*

**STATE OF PUNJAB AND OTHERS,—Respondents**

R.S.A. 2069 of 1985

23rd October, 2008

*Code of Civil Procedure, 1908—Punjab Civil Services (Punishment and Appeal) Rules, 1970—Rls. 8 and 22—Stoppage of annual increments with cumulative effect without following procedure prescribed by rules—Trial Court holding order of punishment void—Orders of punishment never communicated to appellant—1st appellate Court committing an error in raising presumption that orders of punishment were communicated to appellant—1st Appellate Court committing an error of jurisdiction and law in dismissing suit as barred by limitation—Appeal allowed, judgment and decree passed by 1st Appellate Court set aside.*

*Held*, that an order of punishment has to be communicated in accordance with the mandate of Rule 22. A presumption that the orders were conveyed could have arisen, if the respondents had produced the despatch register or the registered AD receipts to establish that the orders of punishment were despatched to the appellant. The respondents, as held by the trial Court and the first appellate Court failed to produce any evidence, in support of their plea that the orders stopping annual increment with cumulative effect were ever conveyed. The first appellate Court, therefore, committed an error by disregarding the provisions of Rule 22 and proceeding to raise a presumption that the orders of punishment were communicated to the appellant. The first appellate Court committed an error in raising a presumption that the orders of punishment were communicated to the appellant and as a result that the suit was barred by time.

(Para 13)

*Further held*, that the suit praying that appellant's salary be re-fixed by grant of the annual increments as the orders of punishment were void was within time and the first appellate Court committed an error of jurisdiction and of law in dismissing the suit as barred by limitation.

(Para 15)

R. S. Ahluwalia, Advocate *for the appellant*.

H.S. Gill, D.A.G., Punjab.

**RAJIVE BHALLA, J (ORAL).**

(1) The appellant lays challenge to the judgment and decree, passed by the Additional District Judge, Gurdaspur, accepting the appeal filed by the respondents, reversing the judgment and decree passed by the trial Court and as a consequence dismissing his suit.

(2) The appellant filed a suit praying that his salary should be correctly fixed as annual increments have not been added to his salary. It was asserted that the appellant was eventually informed that,—*vide* orders dated 1st August, 1978, 29th August, 1978 and 27th December, 1978, separate punishments of stoppage of one increment each, with cumulative effect, were imposed and he was, therefore, not entitled to re-fixation of his salary. The appellant also prayed that as these orders were passed without service of a show cause notice and or the holding of a departmental enquiry they be quashed as illegal and void. The respondents, in addition to other pleadings, asserted that as the orders of punishment were passed in the year 1978, the suit filed in the year 1994 was barred by time.

(3) On the basis of the pleadings, the learned trial Court framed the following issues :—

- (1) Whether the suit is not maintainable in the present form ? OPD
- (2) Whether the suit is within limitation ? OPP
- (3) Whether the orders mentioned in the plaint are illegal and void as alleged ? OPP
- (4) Relief.

(4) *Vide* judgment and decree dated 19th September, 1984, the Sub Judge Ist Class, Batala, decreed the suit by holding that as the orders imposing punishment of stoppage of annual increments with cumulative effect, a major punishment, were passed without following the procedure prescribed by Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, they were void. It was also held that the suit was not barred by time as the orders of punishment were never communicated to the appellant.

(5) The respondents filed an appeal before the Additional District Judge, Gurdaspur. Pursuant to judgment dated 11th February, 1985, the first appellate court accepted the appeal reversed the trial court's judgment and dismissed the suit on the ground that the suit was barred by time. The first appellate court held that though, the orders of punishment were void, but as they had to be challenged within a period of three years, the suit was barred by time. The appellant's submission that the orders of punishment were never communicated to him was negated by raising a presumption that the order must have been communicated as there was note beneath the orders of punishment that the orders be communicated to the appellant.

(6) Counsel for the appellant submits that the impugned judgment and decree is erroneous in law and, therefore, raised the following substantial questions of law :—

- (i) "Whether the first appellate court committed an error in ignoring Rule 22 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 that requires that every order of punishment be communicated by registered post ?"
- (ii) "Whether the first appellate court committed an error in raising a presumption of service of the orders of punishment, on the basis of an endorsement appearing beneath the order ?"
- (iii) "Whether after holding that the order of punishment were void, the first appellate court could have dismissed the suit as barred by limitation ?"

(7) Counsel for the appellant submits that the appellate Court affirmed the findings returned by the trial court that the orders of punishment were void *ab-initio*. However, without reversing the finding, that the orders of punishment were never conveyed or served upon the appellant, the first appellate court proceeded to draw an inference, that the orders must have been communicated as they were endorsed to the appellant. The first appellate court ignored the provisions of Rule 22 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 that require that every order shall be served in person or communicated by registered post. It is further submitted, by placing reliance upon a judgment of this Court reported as **Malkiat Singh versus State of Haryana (1)**, that where the order of punishment is void and has the effect of reducing the salary, the cause of action to challenge such an order would arise every month and, therefore, the suit could not have been dismissed as barred by time.

(8) Counsel for the respondents submits that the impugned judgment does not call for interference. The orders of punishment were passed in 1978 whereas the suit was filed on 5th January, 1984. It cannot be believed that the orders were not communicated or that the appellant was not aware of these orders. The first appellate court, therefore rightly raised a presumption that the orders of punishment had been communicated to the appellant.

(9) I have heard counsel for the parties and perused the impugned orders.

(10) Both courts i.e. the trial Court and the first appellate Court are concurrent, in their finding that the orders of punishment, namely, stoppage of an increment with cumulative effect are void, as they were passed without issuance of a show cause notice or the conduct of an enquiry. These findings have not been impugned by the State of Punjab. The dispute, therefore, centers around the first appellate court's finding that the suit is barred by time.

(11) The learned trial Court held that the suit was within time as the impugned orders of punishment were never conveyed to the

appellant. The first appellate court affirmed this finding and held that though the respondents had failed to produce any evidence to establish that the orders of punishment were conveyed to the appellant, a presumption would have to be drawn that the impugned orders were duly communicated as there is a note beneath each of the impugned orders endorsing a copy to the appellant. A relevant extract from the first appellate court's judgment reads as follows :—

“It is true that the defendant-appellants has not produced the despatch entries to show the despatch of these orders to the delinquent official, but is equally true that there is a note on each of the impugned orders that the copy thereof was endorsed to the concerned official/Traffic Assistant/ECC/D.1/File and there is a presumption regarding the due performance of official Acts. Why should not it be presumed that the impugned orders were despatched to the delinquent official when there is note on them that the impugned orders were conveyed to them. I, therefore, have every reason to presume that the impugned orders were duly communicated to the delinquent official.”

(12) As is apparent from the above extract, the first appellate court relied upon a presumption to non-suit the appellant. While doing so the first appellate court disregarded Rule 22 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, which reads as follows :—

“**22. Service of Orders, notices etc.**—Every order, notice and other process made or issued under these rules shall be served in person on the Government employee concerned or communicated to him by registered post :

Provided that if there is reason to believe that the Government employee is keeping out of the way for the purpose of avoiding service, or that for any other reason, the order, notice and other process cannot be served upon him in the manner aforesaid, the same shall be got published in any of the leading newspapers of the region giving last known address of the employee concerned

and thereupon the same shall be deemed to have been served upon him.”

(13) It is, therefore, apparent that an order of punishment has to be communicated in accordance with the mandate of Rule 22. A presumption that the orders were conveyed could have arisen, if the respondents had produced the despatch register or the registered AD receipts to establish that the orders of punishment were despatched to the appellant. The respondents, as held by the trial Court and the first appellate court failed to produce any evidence, in support of their plea that the orders stopping annual increment with cumulative effect were ever conveyed. The first appellate court, therefore, committed an error by disregarding the provisions of Rule 22 and proceeding to raise a presumption that the orders of punishment were communicated to the appellant. The questions of law framed by counsel for the appellant are, therefore, answered by holding that the first appellate court committed an error in raising a presumption that the orders of punishment were communicated to the appellant and as a result that the suit was barred by time.

(14) There is another aspect that would merit consideration. The orders stopping increments with cumulative effect lead to a reduction in the appellant's salary. The trial Court and the first appellate Court have held that these orders are *void-abinitio*. The question that merits attention is the period of limitation that would govern a challenge to a void order that has the effect of reducing salary. While considering this question, a coordinate Bench had held in **Malkiat Singh versus State of Haryana (2)**, that where a void order has the effect of reducing the salary, the right to file a suit would accrue on a monthly basis and a suit, seeking to set aside such a void order and grant of the correct salary would not be barred by limitation. A relevant extract from the aforementioned judgment would be appropriate :—

“In view of my detailed discussion on the basis of the law laid down by the Apex Court in cases **Madhav Laxman Varkunthe versus State of Mysore** (*supra*) and **P. L. Shah versus Union of India and another** (*supra*) I am also to

observe that in case of **State of Punjab and others versus Gurdev Singh and Ashok Kumar** (*supra*) the point with regard to the recurring cause of and continuous loss when the order of increment with cumulative effect is passed was not raised before the Apex Court rather the observation of the Apex Court in Gurdev Singh's case (*supra*) in para No. 4 "that court's function on the presentation of the 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 helps the case of the appellant with regard to the recurring loss and continuous cause of action which arises every month when the salary is received by him. Rather I am of this opinion that the right to sue accrues to the delinquent official every month when salary is received and in case, the suit is filed after three years on the basis of the order then in that event the delinquent official loses the arrears of his salary if the order is struck down by the court, but in case of Government official he is entitled to the payment of arrears of salary, but for a period of 38 months preceding the date of the filing of the suit including the period of two months under Section 80 CPC. It is further crystal clear from the cases of **State of Punjab versus Gurdev Singh and Randhir Singh versus State of Haryana and orders** (*supra*) that the law quoted in cases **P. L. Shah versus Union of India and Madhav Laxman Vaikunthe** (*supra*) were not cited nor were brought to the notice of the Hon'ble High Court and the Apex Court and moreover in case of **Randhir Singh** (*supra*) relates to in jurisdiction and the petitioner was non-suited on the ground of delay and laches and the point with regard to continuous cause of action and recurring loss were not raised before the Hon'ble High Court and accordingly, it was not considered. Moreover, in case of **Punjab State versus Gurdev Singh and Ashok Kumar** (*supra*) the order of termination was involved before the Apex Court and the question of any continuous cause of

action or recurring loss was not required to be raised before the Apex Court.”

(15) In view of what has been stated herein above, the suit praying that the appellant’s salary be re-fixed by grant of the annual increments as the orders of punishment were void was within time and the first appellate Court, committed an error of jurisdiction and of law in dismissing the suit as barred by limitation.

(16) Consequently, the appeal is allowed, judgment and decree dated 11th February, 1985 passed by the first appellate Court is set aside and the judgment and decree dated 19th September, 1984 passed by Sub Judge Ist Class, Batala is restored. There shall, however, be no orders as to costs.

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**R.N.R.**

***Before K. S. Garewal and Jitendra Chauhan, JJ.***

**RAJ KUMAR @ RAJU,—Appellant**

***versus***

**STATE OF PUNJAB,—Respondent**

Criminal Appeal No. 409-DB of 1998

30th October, 2008

***Indian Penal Code, 1860—Ss.324/323/302—Deceased’s first wife and son separated—Charges against son causing injury to his father—FIR on basis of dying declaration—No corroboration to dying declaration—No explanation as to why and under what circumstances deceased left SGTB Hospital and got himself admitted in Kakkar Hospital, where he ultimately died—Case against appellant not proved beyond reasonable shadow of doubt—Appeal allowed, order of conviction and sentence set aside.***

***Held,*** that there is no explanation as to why and under what circumstances the deceased left the SGTB Hospital and got himself admitted in Kakkar Hosiptal, where he ultimately died. There is no