IN THE COURT OF DR. SUGANDHA AGGARWAL, DISTRICT JUDGE-04, PATIALA HOUSE COURTS, NEW DELHI

CIVIL SUIT NO. 356 OF 2020
DLND010049072020

IN THE MATTER OF:
Pandey Ujjwal Anand
R/o WZ-31A, Gali No. 13,
Krishna Park, Tilak Nagar,
New Delhi-110018

…Plaintiff

Versus

Minwool Rock Fibres Ltd.
Through its Managing Director
Corporate Office at:
8-2-598/A/1/15, Plot No. 15,
Road No. 10, Banjara Hills,
Hyderabad-500034

...Defendant

Date of filing the suit	:	15.10.2020
Date when reserved for judgment	:	25.03.2026
Date of Judgment	:	30.04.2026

JUDGMENT

1. This judgment shall decide the suit for recovery of sum of Rs. 29,67,212/- filed by the plaintiff. Initially, the present suit was filed by the plaintiff under Order 37 of Code of Civil Procedure. However, the present suit was treated as ordinary suit for recovery vide order dated 28.10.2020.

PLEADINGS

2. The facts as averred in the plaint are that the plaintiff was appointed as Regional Manager-North for the defendant company. As per the terms of employment, the plaintiff joined his duty with effect from 15.01.2014 and his place of work was in Delhi. Plaintiff was issued a formal employment letter dated 18.02.2014 confirming his employment with the defendant company.

3. As per the pay package, the gross salary of the plaintiff was Rs. 97,385/- per month and the total monthly payable salary was fixed at Rs. 1,04,333/- which was inclusive of other benefits. The defendant company opened the salary account for the plaintiff in UCO Bank, Naraina, Delhi, bearing account no. 102370110044094.

4. It is further stated that since April 2014, the defendant company was not paying full monthly salary to the plaintiff. The plaintiff has also given the details of the salary which was payable and the actual amount which was paid from 27.03.2014 till 13.01.2017. It is further stated that as on 01.12.2017, a total sum of Rs. 29,67,212/- was due to be paid towards the arrears of salary. Plaintiff approached the management of the defendant company several times for payment of the pending salary amount each and every time he was assured that the dues will be paid in some time.

5. It is further contended that on 15.11.2017 plaintiff was working in his office at Delhi along with other employees. At around 12 noon, officials from Tata Finance along with police officials came to the office of defendant company and took over the possession of the office in compliance of a court order. It is stated that the said fact was duly intimated to the defendant company and

it seems that the company was already aware about it. Since then, the plaintiff had become jobless and subsequent to this event also plaintiff requested the defendant company to clear his arrears of salary.

6. It is further stated that, as the salary remained unpaid, plaintiff issued a legal notice dated 01.11.2018 thereby calling upon the defendant company to clear the arrears of salary amounting to Rs. 29,67,212/- along with interest @18% p.a. within 30 days of the receipt of legal notice. Defendant replied to the same vide reply dated 27.12.2018. It is stated that instead of making the balance payment, defendant raised false and frivolous grounds that the plaintiff was not punctual and regular in attending the office or that the plaintiff has not discharged his duties resulting in huge losses to the defendant company. It is contended that the plaintiff regularly attended the office and all the meetings. The attendance register which was maintained in the office and was also sent to the head office clearly proves the same.

7. It is further contended that the plaintiff has personally visited the clients such as BHEL, L&T, LANKO etc. It was the defendant company who took advances from the clients but could not supply the material on time or the material supplied was defective. It is stated that owing to such conduct of the defendant company, losses were incurred but the same cannot be attributed to the plaintiff.

8. As the arrears of salary remained unpaid, plaintiff was constrained to file the present suit seeking recovery of sum of Rs. 29,67,212/-.

9. The defendant filed the written statement through Sh. Arjun

Badruka who was the authorized representative of the defendant company. He was duly authorised vide the Board Resolution dated 15.05.2016.

10. The defendant has averred that the suit is barred by limitation as the same has been filed on 14.10.2020 claiming arrears of rent from February 2014 to November 2017. It is further submitted that the suit is without any cause of action, the plaintiff has never raised any objection or demanded the unpaid salary for the entire service tenure of three years and it is only after he left his job that he filed the present suit.

11. It is submitted that the plaintiff has not approached the court with clean hands as he has concealed an office order dated 27.02.2014 issued by the defendant company to all its employees. By the said office order, the company has reduced the annual salary of all the employees by 50% and also offered exemption from serving notice period to the employees who did not wish to accept the said reduction. It is further stated that despite issuance of this office order, plaintiff chose to continue with the employment in the defendant company.

12. It is further stated that plaintiff never worked as expected nor gave outstanding performances. In fact, he failed to implement defendant's policies and rules which resulted in huge losses to the defendant company. The plaintiff was irregular in attending the office and out of the total service period of three and a half years, the plaintiff remained absent for approximately fourteen months. Defendant has also pointed out various irregularities committed by the plaintiff while performing his duties as an employee of the

defendant company. It is stated that the plaintiff failed to collect the payments from various customers which remained pending. It is stated that the plaintiff also engaged himself in other businesses and occupations which was contrary to the rules and regulations of the defendant company.

13. It is submitted that in view of the above conduct of the plaintiff, the defendant company suffered consistent business losses and therefore in fact it is the defendant company which is entitled to recover losses from the plaintiff and is not liable to pay any payment to the plaintiff. It is contended that in fact the office at the Naraina, New Delhi was also mortgaged against some business loans for which also the plaintiff was responsible. He was the incharge for management of the entire office situated at Naraina, New Delhi but due to his consistent absent from the job, huge losses were incurred. In fact when the representatives of the financial institution came to take the possession, the plaintiff was not found present in the office and he was forcibly called to the office.

14. Besides this, the fact that the plaintiff was employed as Regional Manager-North w.e.f. 15.01.2014 is not disputed. However, it is reiterated that in view of the above-mentioned submissions, the defendant company is not liable to pay any amount towards the due of the salary.

REPLICATION

15. In his replication, the plaintiff denied the averments of the written statement while simultaneously reiterating and reaffirming the contents of the plaint.

ISSUES

16. After completion of the pleadings and from material on record, following issues were framed on 28.11.2022:-

Issue no. 1: Whether the plaintiff is entitled for recovery of sum of Rs. 29,67,212/- as prayed in the prayer clause (a) of the plaint? OPP

Issue no. 2: Whether the plaintiff is entitled to interest as prayed in the prayer clause (a) of the plaint? OPP

Issue no. 3: Whether the suit is barred by limitation? OPD

Issue no. 4: Whether the suit is without cause of action and is liable to be dismissed as such? OPD

PLAINTIFF'S EVIDENCE

17. In order to prove its case, plaintiff examined himself as PW-1. He has filed his evidence by way of affidavit in examination-in-chief which is Ex. PW1/A wherein he has reiterated the contents of plaint on oath. PW-1 has relied upon various documents i.e.

(1) Appointment letter dated 18.02.2014 as Ex.PW1/1.

(2) Letter dated 04.01.2014 as Ex.PW1/2.

(3) Copy of pass book of plaintiff as Ex.PW1/3 (OSR).

(4) Legal notice dated 01.11.2018 as Ex.PW1/4.

(5) Reply of the legal notice by the defendant dated 27.12.2018 as Ex.PW1/5.

(6) Copy of salary account opened by defendant as Mark A.

18. PW-1 was cross-examined on behalf of defendant by Sh. Vivek Munshi, Ld. counsel and then discharged on 07.12.2023. No other witness was examined by the plaintiff. Thereafter, PE was

closed on 07.05.2024.

DEFENDANT'S EVIDENCE

19. Defendant company examined its authorised representative Sh. Arjun Badruka as DW-1. DW-1 has tendered his evidence by way of affidavit which is Ex.DW1/A. DW-1 has relied upon documents which are as follows:

(1) Board resolution dated 15.05.2016 as Mark DA.

(2) Circular email dated 27.02.2014 as Ex. DW-1/2.

(3) Salary payable ledger as Ex. DW-1/3.

(4) Certificate under section 65-B of the Indian Evidence as Ex. DW-1/4.

20. DW-1 was cross-examined on behalf of plaintiff by Sh. Vivek Singh, Ld. Counsel and then discharged. No other witness was examined by the defendant. Thereafter, defendant's evidence was closed on 12.08.2024 and the matter was fixed for hearing of final arguments vide order dated 12.08.2024.

ARGUMENTS

21. Written arguments have been filed on behalf of both the parties. Arguments have been addressed in the court also.

22. Ld. Counsel for the plaintiff has argued that the suit is well within limitation as the limitation period shall start running from 30.11.2017 when the salary was to be paid last. It is further argued that admittedly on 15.11.2017 the plaintiff was called in the office to assist in the legal proceedings. This fact has been admitted by DW-1 in his cross-examination which clearly shows that the plaintiff was

working with the defendant in November, 2017 also.

23. Ld. Counsel has further argued that as per the schedule placed on record by the plaintiff, the defendant was making part payment and therefore, there is continuous cause of action in favour of the plaintiff and limitation period shall be computed accordingly.

24. It is further argued that the alleged circular by which salary of all the employees was reduced to 50% is false and baseless because subsequent to the date of the said circular, complete salary was disbursed to the plaintiff on few occasions. Further, the plaintiff shall be given advantage of the exemption of limitation period owing to Covid-19 Pandemic and in these circumstances the suit filed by the plaintiff is within limitation.

25. In the written submissions it is stated that the appointment letter Ex. PW-1/1 along with offer letter Ex. PW-1/2 are admitted by the defendant and now the defendant is trying to mislead the Court by making wrong submissions with regard to Ex. PW-1/2.

26. It is further submitted that while replying to the legal notice, the defendant has neither mentioned about any circular regarding reducing the salary to 50% nor any such averment that the dues were not paid to the plaintiff intentionally. This clearly shows that there was no such circular. It is further argued on behalf of the plaintiff that the defendant has examined only one witness who has not filed any attendance register to show that the plaintiff was irregular in performing his duties as alleged.

27. Per contra, Ld. Counsel for the defendant has argued that the suit filed by the plaintiff is barred by limitation as the plaintiff is seeking arrears of salary for the period from February, 2014 till

November, 2017 and the present suit has been filed on 14.10.2020.

28. It is further stated that the suit is without any cause of action and the plaintiff has concealed material facts from the Court. While the plaintiff was in service, office order Ex. DW-1/2 was issued and circular was also issued to the employees wherein the salary was reduced to 50%. Therefore, the plaintiff did not raise any demand while being in service and after leaving the employment, the plaintiff is trying to take advantage of his letter of appointment.

29. It is further stated that the plaintiff was offered the position of Regional Manager (North) and was assured that he will be maximizing the business of the defendant company, however the plaintiff was negligent in discharging his official duties and was not even attending the office regularly. The plaintiff has failed to even collect the payment from several customers such as LANCO, BHEL and L&T etc.

30. It is further contended that PW-1/plaintiff has admitted in his cross-examination that the last salary was received by him on 13.11.2017 and he has filed the present suit on 15.10.2020 seeking arrears of salary from January, 2014 to November, 2017 which is clearly barred by limitation. Ld. Counsel for defendant has relied upon following judgments passed by Hon'ble Apex Court in support of his contentions : -

(A) Union of India & Others Vs. Tarsem Singh, SLP (C) Nos. 3820-3821 of 2008, decided on 13.08.2008.

(B) Bhagirath Prasad Sharma Vs. State of Uttar-

Pradesh, 2024:AHC:111436 A.F.R, decided on 09.07.2024.

(C) Shishuvihar Shaishanik Sanstha Chalisgaon & Another Vs. State of Maharashtra, W.P. No. 8966 of 2022, decided on 21.10.2024.

FINDINGS

31. I have considered the rival contentions and have perused the record. My issue-wise findings are as follows:

Issue no. 1: Whether the plaintiff is entitled for recovery of sum of Rs. 29,67,212/- as prayed in the prayer clause (a) of the plaint? OPP

Issue no. 3: Whether the suit is barred by limitation? OPD

Issue no. 4: Whether the suit is without cause of action and is liable to be dismissed as such? OPD

32. The onus to prove issue no.1 was upon the plaintiff, whereas the onus to prove issues no.3 and 4 was upon the defendant.

32.1 The findings on these issues are interconnected and overlapping, accordingly, these issues are taken up together for adjudication.

32.2 The plaintiff has averred that he was employed as Regional Manager, North, vide appointment letter dated 04.01.2014, by the defendant company at a fixed CTC of Rs.12.52 lakhs per annum. The plaintiff has further averred that he joined his duties with the defendant company on 15.01.2014 and a formal appointment letter dated 18.02.2014 was thereafter issued to him.

32.3 These facts have not been disputed by the defendant. Thus, the fact that the plaintiff was employed with the defendant company as Regional Manager, North, on the terms and conditions contained in the appointment letter stands duly established.

32.4 The plaintiff has further averred that, as per the appointment letter, his gross salary was Rs.97,385/- per month. However, since joining the defendant company, he was not paid his full salary. The plaintiff has furnished the break-up of the salary received by him from 2014 to 2017. He has further averred that he had been continuously pursuing the defendant for payment of his outstanding salary dues, which however remained unpaid.

32.5 The defendant has not disputed that the plaintiff was appointed with a salary of Rs.97,385/- per month. It has been averred that, owing to financial constraints, the defendant company issued an office circular dated 27.02.2014 whereby all employees were informed that their salaries would be reduced by up to 50%. By way of the said circular the employees were also given an option to quit from the service, alongwith the exemption from serving the notice period. It is the contention of the defendant that, despite the said circular, all employees, including the plaintiff, chose to continue in employment. It is thus submitted that in these circumstances, the salary of the plaintiff stood reduced by upto 50%, and that the plaintiff has concealed this material fact.

32.6 It is further contended by the defendant that the plaintiff was irregular in attending his duties and, out of total tenure of three and half years, he remained absent for about fourteen months. It is also alleged that the plaintiff was not diligent in the discharge of his duties.

32.7 It is the case of the defendant that the company was incurring losses, and the plaintiff was appointed as the Regional Manager, North, on the basis of his assurance that he would enhance the business of the company in the Northern Region. It is further stated that the plaintiff failed to recover the outstanding dues from several customers of the defendant company, including LANCO, BHEL, L&T, which allegedly resulted in substantial financial losses to the defendant. On this basis, it is contended that the defendant company is entitled to recover damages from the plaintiff and that the plaintiff is not entitled to recover any salary dues.

32.8 It is further contended by the defendant that, in view of the aforesaid facts the present suit is without any cause of action. It is also averred that the suit, having been filed on 14.10.2020, seeks recovery of alleged salary arrears for the period 2014 to 2017, and is thus barred by limitation having been instituted beyond the prescribed period of three years.

32.9 The plaintiff has sought recovery of arrears of salary. In order to succeed, the plaintiff is required to establish that he was employed with the defendant company, the agreed quantam of salary, and that the said amount was not paid to him. These foundational facts stand admitted by the defendant. Infact, the continuance of the plaintiff in the service of the defendant company till November 2017 stands duly established, inter-alia, the testimony of DW-1.

32.10 The defendant has resisted the claim of the plaintiff primarily on the grounds that, by virtue of the office circular dated

27.02.2014, the salaries of all the employees were reduced by upto 50%, and further, that the plaintiff was not diligent in discharge of his duties and was irregular in attending office.

32.11 As the defendant has pleaded all the aforementioned facts, therefore the onus was upon the defendant to prove the same. The principles of burden to prove a particular fact is contained in Section 104 and 106 of Bhartiya Sakshya Adhiniyam, 2023. These provisions are reproduced herein as under:

> *"104. **Burden of proof.**—Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist, and when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*
>
> *Illustrations.*
>
> *(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime.*
>
> *(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true. A must prove the existence of those facts.*
>
> *106. **Burden of proof as to particular fact.**—The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.*
>
> *Illustration.*
>
> *A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission. B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.*
>
> *xxxx"*

32.12 Therefore, in view of Sections 104 and 106 of the Bhartiya Sakshya Adhiniyam, 2023, the burden squarely lay upon the defendant to establish that an office circular dated 27.02.2014 was issued, whereby the salaries were reduced by up to 50%. It was further incumbent upon the defendant to prove that the plaintiff was irregular in attending his duties and that he failed to discharge his functions diligently. The defendant has taken a plea that the salary of the plaintiff was reduced by upto 50% vide office circular dated 27.02.2014. In the written statement, it is stated that the said office circular was issued to all employees and was never challenged by the plaintiff. However, the defendant has failed to elaborate the mode and manner of circulation of the said circular to its employees.

32.13 The plaintiff, who examined himself as PW-1, has categorically denied receipt of any such circular and has stated that no such circular was ever communicated to him. In order to prove the issuance and communication of the office order dated 27.02.2014, the defendant has examined Sh.Arjun Badruka as DW-1.

32.14 DW-1 has reiterated in his evidence that the office order dated 27.02.2014 was issued. However, in his affidavit in examination-in-chief, DW-1 has not disclosed the mode of circulation of the said circular to the employees. It has not been clarified whether the said circular was served individually upon each employee or was circulated through any common platform, such as group email or shared communication channel.

32.15 It is only during cross-examination that DW-1 disclosed that the circular was circulated via email dated 27.02.2014 addressed to "distribution@minwool.com." It has been stated that the said email ID is accessible to all the employees as well as the management of

SUGANDHA AGGARWAL Digitally signed by SUGANDHA AGGARWAL Date: 2026.04.30 10:13:55 +0530 the defendant company. Thus, it is evident that the said circular was not individually served upon each employee.

32.16 Further the defendant has merely placed on record a printout of the alleged circular, which has been identified by DW-1 as Ex DW-1/2. However, the said printout does not bear any endorsement or authentication to establish that the circular was infact issued on 27.02.2014. As per law, a printout taken from a computer system is required to be supported by a certificate under Section 63 of Bhartiya Sakshya Adhiniyam, 2023 (in the present case under Section 65 B of Indian Evidence Act), issued by a competent person, certifying the manner of its production and the correctness of its contents by a person who had taken out the printout thereby authenticating the correctness of the printout.

32.17 As per the record, the defendant has placed on record a supporting certificate, which has been identified by DW-1 as Ex DW-1/4. However, the same was objected to on behalf of the plaintiff on the ground that it was not filed along with the written statement and was brought on record only at the stage of recording evidence, without seeking leave of the court. The said objection was kept open to be adjudicated at the final stage.

32.18 During the course of trial the defendant has failed to disclose any justification as to why the certificate Ex DW-1/4 was not filed on record along with the written statement particularly when the printout Ex DW-1/2 has already been filed at that stage. Even otherwise, assuming the said certificate is taken into consideration the same does not satisfy the legal requirements to establish the genuineness of Ex DW-1/2.

32.19 Ex DW-1/2 purports to be an office circular dated 27.02.2014, whereas the certificate Ex DW-1/4 reads that the printout was generated on 01.02.2026. Further, the certificate clearly states that it has been issued by DW-1, however, in Clause (C) thereof, DW-1 admits that he is not the person who has taken the printout of the email annexed with the written statement, and that the same was taken by some office staff.

32.20 Moreover, DW-1 has admitted in his cross-examination that, as per the office circular Ex- DW-1/2, the reduction of salary by 50% was to take effect from 01.04.2014. The statement of salary placed on record would show that the plaintiff was paid a sum of Rs.97385/-, in the month of June 2014. Infact, a specific suggestion to this effect was put to PW-1 during his cross-examination. The relevant portion of the cross-examination reads as under:-

> *I have not filed any application for calling the said attendance record. It is correct that I had hired for a net salary of Rs.97000/- approximately. I have received the full salary in the month of June 2014.*
>
> *At this stage, the plaintiff is shown the para no.5 and 6 of the plaint alongwith the para no.4 and 5 of affidavit in evidence. "Wherein it has been stated that the plaintiff has not received the full salary since the commencement of the job".*
>
> *Q. I put it to you that whether the averments in the para no.5 and 6 of the plaint or para no.4 and 5 of the affidavit in evidence are correct?*
>
> *Ans. I have received the full salary only twice during the entire employment.*

32.21 A reading of the aforesaid testimony shows that PW-1 stated that he received the full salary in the month of June 2014 and admitting this fact to be correct he was confronted by the defendant with his earlier statement of the plaint claiming that he never received the full salary. This clearly establish that the defendant admitted that in June 2014 plaintiff has received net salary of Rs.97,385/- which was the complete salary. This admission assumes significance inasmuch as it established that, at least for the month of June 2014, the plaintiff was paid the complete salary of approximately Rs.97,385/-. This position is clearly inconsistent with the stand of the defendant that, pursuant to the alleged office circular (Ex.DW1/2), effective from 01.04.2014, the salaries of employees stood reduced by 50%.

32.22 Thus, the conduct of the defendant itself belies its plea regarding uniform reduction of salary, and casts serious doubt on the genuineness and implementation of the alleged circular. Accordingly, the defendant has failed to prove that the salary of the plaintiff stood reduced in terms of any validly issued and duly communicated office order.

32.23 The defendant has further averred that out of the total tenure of three and half years, the plaintiff remained absent from duty for about fourteen months.

32.24 The onus to prove the aforesaid plea was upon the defendant. The defendant being the employer, would be in possession of the attendance record of plaintiff. Despite having taken a categorical plea that the plaintiff was irregular in attending office and despite examining DW-1, the defendant has failed to place on record the attendance register or any documentary evidence in this regard.

32.25 Infact, a suggestion was put during the cross-examination of PW-1 by the defendant that he had not filed any attendance register on record. In response, PW-1 stated that he was not in possession of the record of the company and therefore, could not produce the same. Despite this explanation, the defendant did not produce the attendance record which was admittedly within its custody.

32.26 Further, during cross-examination DW-1 admitted that the plaintiff used to mark his attendance in the attendance register and also conceded that the said record has not been filed with the written statement. This clearly shows that, despite being in possession of the best evidence, the defendant has withheld the same without any plausible explanation.

32.27 Accordingly, an adverse inference is liable to be drawn against the defendant for non-production of the attendance record. In these circumstances, the defendant has failed to establish its plea that the plaintiff was irregular in attending office.

32.28 The defendant has also alleged that the plaintiff was not diligent in discharging his duties. However, the said plea is a bald assertion, unsupported by any documentary evidence. Although, DW-1 has reiterated this contention in his testimony, he has not deposed that he was working with the plaintiff during the relevant period or that he had any personal knowledge of the plaintiff's alleged lack of diligence.

32.29 During cross-examination, DW-1 deposed that the defendant company had issued several reminders, emails and letters to the plaintiff for recovery of pending dues from its customers. However, none of the said communications have been placed on record to substantiate this claim. A suggestion was also given to DW-1 during his cross-examination but despite pointing out, the defendant neither placed any such communication on record nor gave any explanation for the same. Despite the aforesaid stand, the defendant company has not placed on record any document to substantiate its contention that payments were pending to be recovered from its customers.

Infact, as per the own case of the defendant company, the plaintiff remained in its employment for approximately three and half years. In the ordinary course of business, if an employee is irregular in attending duties or is not discharging his duties diligently, the employer would ordinarily issue memos or notices in that regard.

32.30 In the present case, neither any action appears to have been taken by the defendant, nor has any document been placed on record to evidence the same. Accordingly, the defendant has failed to prove its plea regarding alleged negligence or lack of diligence on the part of the plaintiff.

32.31 In view of the aforesaid discussion, it stands established that the plaintiff had a subsisting cause of action in respect of unpaid salary dues. However, it remains to be considered whether the claim of the plaintiff falls within the prescribed period of limitation .

32.32 The plaintiff has claimed arrears of salary for the period from February 2014 till November 2017. He has instituted the present suit on 14.10.2020. The limitation in the present case is governed by Article 7 of the Schedule to the Limitation Act, 1963 which prescribes a period of three years from the date when the wages accrue due.

32.33 Learned Counsel for the plaintiff has argued that the plaintiff has issued a legal notice dated 27.12.2018 to the defendant. It is further contended that, from the testimony of DW-1, it stands established that the plaintiff continued in service of the defendant company till November 2017. It is also submitted that, as per the salary ledger placed on record by the defendant itself, the last salary payment was made till January 2017.

32.34 It is argued that these facts duly establish that the defendant had continuously failed to pay the salary dues of the plaintiff till November 2017, thereby giving rise to a continuous cause of action .

32.35 It is argued on behalf of the plaintiff that, in these circumstances, the period of limitation ought to be computed from November 2017, i.e. the date when the plaintiff ceased to be in service. It is further contended that a fresh cause of action also accrued in favour of the plaintiff upon service of legal notice dated 27.12.2018 (Ex PW-1/5) upon the defendant. It is also argued that the plaintiff is entitled to the benefit of extension of limitation in view of the orders passed by the Hon'ble Supreme Court I**n Re: Cognizance for Extension of limitation, Suo Motu Writ Petition (Civil) No.3 of 2020.**

32.36 On this basis, it is argued that the suit has been filed within the period of limitation.

32.37 Per contra, learned counsel for the defendant has argued that non-payment of salary does not constitute a continuous breach. It is submitted that each instance of non-payment of monthly salary gives rise to a separate and distinct cause of action. It is further contended that, even if it is accepted that the plaintiff continued in service till November 2017, the institution of the suit in October 2020 would not bring within limitation the claims pertaining to the salary for the months prior to October 2017. In support of this contention, reliance has been placed upon certain judicial precedents.

32.38 It has been correctly pointed out on behalf of the defendant that the period of limitation is to be computed from the date when the cause of action arises, and mere service of a legal notice does not extend the period limitation unless there is a written acknowledgment of liability by the defendant, or part payment is made in terms of law.

32.39 In the present case, it is an admitted position that the last payment of salary was made in January 2017. There is no material on record to show any written written acknowledgment by the defendant admitting its liability to pay the alleged salary dues. Thus, mere service of legal notice would not extend the period of limitation.

32.40 The question that now arises for consideration is whether non-payment of monthly salary can be termed as a continuous breach so as to give rise to a continuing cause of action, or whether each default constitutes a recurring breach giving rise to separate cause of action. This distinction has been elaborated by the Hon'ble Supreme Court in ***Union of India Vs. Tarsem Singh, SLP (C) Nos. 3820-3821 of 2008***, wherein it has been held as under:

> *4. The principles underlying continuing wrongs and recurring/ successive wrongs have been applied to service law disputes. A `continuing wrong' refers to a single wrongful act which causes a continuing injury. `Recurring/successive wrongs' are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. This Court in Balakrishna S.P. Waghmare vs. Shree Dhyaneshwar Maharaj Sansthan - [AIR 1959 SC 798], explained the concept of continuing wrong (in the context of section 23 of Limitation Act, 1908 corresponding to section 22 of Limitation Act, 1963) :*
>
> *"It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."*
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> *In M. R. Gupta vs. Union of India [1995 (5) SCC 628], the appellant approached the High Court in 1989 with a grievance in regard to his initial pay fixation with effect from*

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1.8.1978. The claim was rejected as it was raised after 11 years. This Court applied the principles of continuing wrong and recurring wrongs and reversed the decision. This Court held :

"The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc., would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation, the application cannot be treated as time barred........."

In Shiv Dass vs. Union of India - 2007 (9) SCC 274, this Court held:

"The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition.......... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years."

5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

32.41 In the aforesaid judgment, the Hon'ble Supreme Court declined the claim for payment of disability pension from the date it became due, on account of delay of 16 years. The said judgment draws a distinction between a continuing cause of action and a recurring cause of action. It clarified that a continuing cause of action arises where there is a continuing breach or continuous infringement of a right, resulting in a subsisting and ongoing injury. In such case, the wrongful act is of such a nature that it continues from day to day.

32.42 On the other hand, a recurring cause of action arises where individual wrongful acts occur periodically, each giving rise to a separate and complete cause of action. In such cases, each default constitutes an independent injury, complete in itself.

32.43 It has been held by the Hon'ble Supreme Court in **Union of India Vs. Tarsem Singh (supra)** that non-payment or part payment of monthly salary does not constitute a continuing wrong but gives rise to a recurring cause of action. Each instance of non-payment of salary for a particular month constitutes a complete breach, entitling the employee to sue for recovery of such salary within a period of three years from the date when the salary for that month became due.

32.44 In view of the aforesaid legal position, in the present case, it cannot be held that there was continuing breach on the part of the defendant in respect of non-payment of salary. The plaintiff has claimed arrears of salary for the period from February 2014 to November 2017. Admittedly, the last payment of salary was made in January 2017. In view of the settled legal position that non-payment of monthly salary gives rise to a recurring cause of action, the limitation for each unpaid month would commence from the date when such salary became due. Thus, any claim pertaining to salary which became due prior to three years from the date of institution of the suit would be barred by limitation. Accordingly, where the suit has been instituted on 15.10.2020, the claim for arrears of salary prior to October 2017 would be barred by limitation. Consequently, the claim of the plaintiff for arrears of salary for the period February 2014 to September 2017 is ex facie barred by limitation.

32.45 The plaintiff has also sought the benefit of extension of limitation in terms of the orders passed by the Hon'ble Supreme

Court in **In Re: Cognizance for Extension of limitation, Suo Motu Writ Petition (Civil) No.3 of 2020** during the Covid-19 pandemic. The Hon'ble Supreme Court laid down certain directions extending the period of limitation in all proceedings, having regard to the extraordinary situation arising out of the pandemic. The relevant principles governing such extension are as follows: --

> *2. Considering the reduction in prevalence of COVID-19 virus and normalcy being restored, the following order was passed in the Suo Motu proceedings on 08.03.2021:*
>
> *1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.*
>
> *2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.*
>
> *3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and*

provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

4. The Government of India shall amend the guidelines for containment zones, to state.

"Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements."

32.46 If the aforesaid exemptions are applied, the case of the plaintiff would fall within the second category of cases covered under the directions issued by the Hon'ble Supreme Court in suo motu proceedings. In such circumstances, while computing the period of limitation, the period from 15.03.2020 till 14.03.2021 is liable to be excluded.

32.47 However, even after granting the benefit of the said exclusion, the claim of the plaintiff would remain governed by the principle that each month's unpaid salary gives rise to a separate cause of action. Accordingly, the limitation for recovery of salary dues would extend to a period of three years prior to the date of institution of the suit, subject to the aforesaid exclusion.

32.48 In view thereof, the claim of the plaintiff for salary dues from March 2017 onwards would fall within the period of limitation. Accordingly, the plaintiff is held entitled to recover his salary dues for the period from March 2017 till 15.11.2017.

All the issues at hand are decided in terms of aforesaid findings.

Issue no. 2: Whether the plaintiff is entitled to interest as prayed in the prayer clause (a) of the plaint? OPP

33. The onus to prove this issue was upon the plaintiff. The plaintiff has claimed the interest @ 18% per annum on his salary dues from the date when his salary became due till actual realisation. There is no agreed rate of interest between the parties. The interest @ 18% per annum as prayed by the plaintiff shall be exhilarated. I am the of considered view that the interest @ 6% shall serve the ends of justice. Accordingly, interest @ 6% is awarded on the salary of each month from the date when it became due till filing of the suit.

33.1 Plaintiff is also awarded interest @ 6% on the total recoverable principal amount from the date of filing of the suit till actual realisation.

<u>RELIEF:</u>

34. In view of the above discussion the suit is partly decreed in favour of the plaintiff and decree for recovery of salary dues @ Rs.97385/- from March 2017 till 15.11.2017 is passed in favour of the plaintiff.

34.1 Plaintiff is also held entitled for interest @ 6% on the salary of each month from the date when it became due till filing of the suit.

34.2 Plaintiff is also awarded interest @ 6% on the total recoverable principal amount from the date of filing of the suit till actual realisation.

34.3 Cost of litigation is also awarded in favour of the plaintiff.

35. Decree-sheet be prepared accordingly. File be consigned to record room after due compliance.

SUGANDHA AGGARWAL
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Date: 2026.04.30 10:15:52 +0530

(Dr. Sugandha Aggarwal)
District Judge-04,
Patiala House Court, New Delhi

This judgment contains 28 pages and all pages have been duly signed by me.

Announced in the open court on
30th April 2026

(Dr. Sugandha Aggarwal)
District Judge-04,
Patiala House Court, New Delhi