

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.8441 OF 2009

DEVENDER KUMAR PAL (DEAD) THR.LRS.

.....APPELLANTS

VERSUS

STATE OF HARYANA & ORS.

.....RESPONDENTS

O R D E R

It is not a matter of dispute that the appellant - Devender Kumar Pal (since deceased) was placed under suspension by an order dated 10.09.1984. Consequent upon the holding of a regular departmental enquiry, he was inflicted with the punishment of removal from service on 23.01.1992. The appellant assailed the order of removal from service by preferring an appeal, which was dismissed by two orders dated 26.03.1996 and 14.02.1997.

The appellant preferred a civil suit on 11.12.2001, assailing the appellate order, seeking all consequential monetary benefits. A perusal of the factual position reveals, that the civil suit was filed by the appellant four years and ten months from the second/subsequent appellate order dated 14.02.1997. The question, that has arisen for consideration before this Court is, whether the aforesaid suit was preferred by the appellant within the period of limitation? All the Courts below, including the High

Court of Punjab and Haryana at Chandigarh, held concurrently, that the remedy availed of by the appellant in preferring the suit, was beyond the period of limitation, and as such, the suit was not maintainable in law.

To persuade this Court on the legal issue namely, the period of limitation, learned counsel for the appellants has placed reliance on a Constitution Bench decision in State of Madhya Pradesh vs. Syed Qaamarali (1967) 1 SLR 228, wherein this Court observed as under:

"20. We therefore hold that the order of dismissal having been made in breach of a mandatory provision of the rules subject to which only the power of punishment under section 7 could be exercised, is totally invalid. The order of dismissal had therefore no legal existence and it was not necessary for the respondent to have the order set aside by a court. The defence of limitation which was based only on the contention that the order had to be set aside by a court before it became invalid must therefore be rejected."

We have given our thoughtful consideration to the issue canvassed at the hands of the learned counsel for the appellants. Even if it is assumed for the sake of argument, that the impugned order of removal dated 23.01.1992 was void, and was liable to be declared as such, still in our considered view, the appellant cannot be entitled to any benefit, on account of the plea of limitation. In this behalf, it would be relevant to notice, that even if the order of the appellant's removal was void, and the appellant should be deemed to be continuing in service, the appellant would have superannuated from service on 30.06.1997. Thus viewed, the appellant would not have been eligible, even for arrears of pay beyond three years preceding the date when he

preferred his suit on 11.12.2001. It is therefore apparent, that the appellant could not even claim any arrears of salary, as he would have retired on attaining the age of superannuation, well before 3 years of filing the suit.

For the reasons recorded hereinabove, we find no merit in the instant appeal and the same is accordingly dismissed.

.....J.
(JAGDISH SINGH KHEHAR)

.....J.
(KURIAN JOSEPH)

.....J.
(ARUN MISHRA)

NEW DELHI;
JULY 20, 2016.

ITEM NO.104

COURT NO.3

SECTION IV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SCivil Appeal No(s).8441/2009

DEVENDER KUMAR PAL (DEAD) THR. LRS.

Appellant(s)

VERSUS

STATE OF HARYANA & ORS.

Respondent(s)

Date : 20/07/2016 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR

HON'BLE MR. JUSTICE KURIAN JOSEPH

HON'BLE MR. JUSTICE ARUN MISHRA

For Appellant(s)

Mr.Himanshu Gupta, Adv.

Mr. Shivaji M. Jadhav, Adv.

For Respondent(s)

Dr.Monika Gusain, Adv.

Mr. Samir Ali Khan, Adv.

Upon hearing the counsel the Court made the following

O R D E R

The appeal is dismissed in terms of the signed order.

(SATISH KUMAR YADAV)

AR-CUM-PS

(Signed order is placed on the file)

(RENUKA SADANA)

COURT MASTER