

PUNJAB STATE AND ANR.

v.

DARSHAN KUMAR

NOVEMBER 2, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Service Law :

Increments—Withholding of—Suit filed on the ground that orders were not communicated—Suit decreed by Trial Court and upheld by Appellate Court—Suit—Whether barred by limitation—Held : Plea of non-communication not taken—Except two orders, all other orders passed before three years of filing of the suit—Hence barred by limitation—Limitation Act, 1963.

The Respondent filed a suit challenging the orders passed by the competent authority, withholding his increments. The Civil Court held that since the procedure contemplated under the relevant rules had not been followed in conducting the enquiry, the suit was not barred by limitation. The Appellate Court had only stated that no order was communicated. Hence this appeal by the State Government.

Allowing the appeal, this Court

HELD : 1. It does not appear that the respondent had taken the plea that the orders were not communicated to him. Admittedly, the suit was filed on September 25, 1989. Except the orders of October 8, 1987 and November 3, 1988 all other orders were passed before three years of the filing of the suit and are clearly barred by limitation. [728-E]

2. The decree of the Trial Court is modified to the extent that withholding of the increments by orders dated October 8, 1987 and November 3, 1988 are invalid in law. In other respects, the claims are barred by limitation. [728-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10269 of 1995

From the Judgment and Order dated 30.3.93 of the Punjab & Haryana High Court in R.S.A. No. 483 of 1993.

A Sanjay Bansal for G.K. Bansal for the Appellant.

R.K. Mahajan and B.Y. Kulkarni for the Respondent.

The following Order of the Court was delivered :

B Leave granted

C In this case, the respondent had filed the suit questioning the orders dated 19.5.76, 28.12.77, 13.10.78, 2.7.79, 18.5.84, 29.5.86, 8.10.87 and 3.11.88 passed by the competent authority, withholding the increments. The Civil Court considered the question of limitation and held that since the procedure contemplated under the relevant rules had not been followed in conducting the enquiry, the suit is not barred by limitation. The Appellate Court has only stated that "no order was communicated".

D We have gone through the allegation stated in the plaint and written statement as extracted in the judgment of the Trial Court. It does not appear that the respondent had taken the plea that the orders were not communicated to him. Admittedly, the suit was filed on September 25, 1989. Except the orders of October 8, 1987 and November 3, 1988 all other orders were passed before three years of the filing of the suit and are clearly barred by limitation.

E Under these circumstances, the decree of the Trial Court is modified to the extent that withholding of the increments by orders dated October 8, 1987 and November 3, 1988 are invalid in law. In other respects, the claims are barred by limitation.

F The appeal is allowed accordingly. No costs.

G.N.

Appeal allowed.