

merely because they belong to different departments. If that cannot be done when they are in service, can that be done during their retirement? Expanding this principle, it can confidently be said that if pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later."

The petitioner is thus entitled to pension as a retired member of the Punjab Public Service Commission with effect from August 10, 1972.

(8) In the light of the discussion above, I allow this petition to the extent that the Punjab State Government would pay to the petitioner pension as a retired member of the Punjab Public Service Commission with effect from August 10, 1972 in accordance with law and the observations made above. The arrears up to date would be cleared off by this respondent within a period of four months from today. Since the petitioner has been deprived of the pensionary benefits all through without any justifiable cause, he is held entitled to interest at the rate of 12 per cent on the arrears of the pensionary amount till the date of its payment. He would also have Rs. 500 as costs of this petition.

(9) Against all other respondents, the petition fails and is dismissed.

N. K. S.

*Before J. V. Gupta, J.*

DHANI RAM,—Appellant.

*versus*

THE CHAIRMAN, HARYANA STATE ELECTRICITY BOARD,—  
Respondent

Regular Second Appeal No. 1144 of 1976

August 2, 1984

*Haryana Government Electrical Undertakings (Dues Recovery) Act (XXIX of 1970)—Sections 4 and 5—Excess amount allegedly demanded by the Electrical Undertaking—Such amount deposited under protest—Suit for recovery of the amount filed beyond six months from the date of deposit—No evidence that any notice of*

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*demand had been served under section 4—Suit—Whether could be held to be barred by time.*

*Held*, that from the language of sub-section (1) of section 5 of the Haryana Government Electrical Undertakings (Dues Recovery) Act, 1970, it is quite evident that when a notice of demand has been served under section 4 of the Act, only then a suit may be instituted in a Civil Court within six months from the date of the deposit. Where there is no evidence on the record to prove that any such demand notice was issued, it could not be held that the suit which was filed beyond six months from the date of deposit was barred under section 5 of the Act.

(Para 5):

*Regular Second Appeal from the order of the Court of Shri Hari Ram, Senior Sub-Judge (with Enhanced Appellate Powers), Karnal, dated the 20th day of August, 1975 affirming that of Shri S. D. Arora, Sub-Judge, II Class, Kaithal, dated the 1st day of August, 1973 dismissing the suit of the plaintiff with costs.*

V. K. Jain, Advocate, for the Appellant.

Hanwant Singh Hooda, Advocate, for the Respondent.

### JUDGMENT

J. V. Gupta, J.:

(1) This is plaintiff's second appeal whose suit for the recovery of Rs. 841 has been dismissed by both the Courts below as being barred by time.

(2) The plaintiff filed the suit for the recovery of Rs. 841 wrongly recovered by the defendant. In paragraph 4 of the plaint, it was pleaded that the plaintiff had to deposit the sum of Rs. 841 on December 28, 1970, for the excess running of the meter due to the defect therein and that the said amount was deposited under compulsion. According to the plaint, the cause of action had arisen to the plaintiff on December 28, 1970, the date of depositing the amount of Rs. 841 in the office of the Sub-Divisional Officer,

Haryana State Electricity Board, Pehowa. In the written statement filed on behalf of the defendant Board a preliminary objection was taken and it was pleaded that the suit was barred by time. On merits also, the allegations made in the plaint were controverted. On the pleadings of the parties, the trial Court framed the necessary issues. Issue No. 1 was to the effect whether the suit was time-barred? This issue was treated as a preliminary issue and the parties did not lead any evidence on this issue. According to the learned trial Court, the limitation for filing such a suit was six months from the date of the deposit under section 5 of the Haryana Government Electrical Undertakings (Dues Recovery) Act, 1970, (hereinafter called the Act), whereas, admittedly, the suit was filed on October 11, 1972, which was beyond six months from the date of the deposit. As a result, his suit was dismissed as barred by time. In appeal, the learned Senior Subordinate Judge with enhanced appellate powers affirmed the said finding of the trial Court on the preliminary issue and, thus, maintained the decree dismissing the plaintiff's suit. Dissatisfied with the same, he has filed this second appeal in this Court.

(3) The learned counsel for the appellant contended that section 5 of the Act, was not applicable to this case because thereunder the suit contemplated was one where a notice of demand had been served for the dues under section 4 on the debtor and the amount was deposited under protest, in writing, and the debtor contested his liability to pay the said dues. According to the learned counsel, there was no evidence on the record to show that any demand notice, as provided under section 4 of the Act, in the prescribed form, was ever issued to the plaintiff. According to the plaintiff, only the bill was issued to him on which the amount was deposited under protest. Thus, argued the learned counsel, section 5 of the Act was not at all applicable to the facts of this case and that in the instant case, the limitation to bring the suit was three years from the date of the deposit, under the Limitation Act.

(4) After hearing the learned counsel for the parties, I find force in the contention raised on behalf of the appellant.

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(5) Section 5 of the Act, reads,—

“5. *Suit to challenge liability to payment.*--(1) Where a notice of demand has been served on the debtor or his authorised agent under section 4, he may if he denies his liability to pay the dues, penalty or costs or any part of any of them, and after depositing with the prescribed authority the aggregate amount specified in the notice of demand under protest in writing that he is not liable to pay the same, institute a suit for the refund of the dues or part thereof so deposited.

(2) A suit referred to in sub-section (1) may be instituted in a Civil Court of competent jurisdiction at any time within six months from the date of deposit with the prescribed authority and subject to the result of such suit, the notice of demand shall be conclusive proof of the various dues, penalty and cost mentioned therein.”

From the language of sub-section (1) of section 5, it is quite evident that when a notice of demand has been served under section 4 of the Act, only then a suit may be instituted in a civil Court within six months from the date of the deposit. Admittedly, in the present case, there is no evidence on the record to prove that any such demand notice was issued the appellant. In the absence of any such evidence, it could not be held that the plaintiff's suit was barred under section 5 of the Act. The approach of the Courts below in this behalf is wrong and illegal.

(6) In this view of the matter, this appeal succeeds and is allowed with costs. The case is remanded to the trial Court for fresh decision on all the issues including the issue of limitation after allowing the parties to lead evidence. The parties have been directed to appear in the trial Court on September 5, 1984. The records of the case be sent back forthwith. Since the present suit was filed in the year 1972, it is directed that its disposal be expedited; preferably within six months.

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N. K. S.