



RSA-2986-2001 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

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RSA-2986-2001 (O&M)  
Date of Decision : 22.10.2024

Raj Pal .....Appellant

Versus

Market Committee ....Respondent

**CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Raman B. Garg, Advocate with  
Mr. Mayank Garg, Advocate for the appellant.

Mr. Padamkant Dwivedi, Advocate  
for respondent No.1.

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**SUDEEPTI SHARMA, J.**

1. The challenge in the present appeal is to the judgment and decree dated 09.02.1998 whereby the appeal filed by the respondent-defendant against the judgment and decree dated 19.09.1997 filed by the plaintiff/appellant, was allowed.
2. Brief facts of the case as mentioned before the Civil Judge (Junior Division), Jind are that the plaintiff/appellant was in the employment of Market Committee, Julana as Sweeper on permanent post and the said Market Committee is Government Agency working under the Haryana State Agriculture Marketing Board. The plaintiff/appellant joined service as Sweeper in 1980 and continued on the said post without interruption and was not offered any promotional post. The plaintiff/appellant was placed under suspension on 4.8.1993 but later on reinstated on 15.3.1994 by the defendant No.1 and his two increments were stopped with cumulative effect. The plaintiff/appellant filed an appeal before the Chief

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Administrator of the H.S.A.M.P., Panchkula against the order of punishment passed by defendant No.1. The said appeal was accepted and the order of punishment was set aside by Chief Administrator on 30.8.1994. As a result of said order, the plaintiff/appellant became entitled to his salary which has been held up during the period of suspension, i.e., salary from 1.8.1993 to 15.3.1994. After order dated 30.8.1994 the defendant did not commence any enquiry nor passed any order against the plaintiff/appellant. When the order of the committee through which the committee had decided not to pay any arrears of past period to the plaintiff/appellant, had been set aside vide order dated 30.8.1994 of Chief Administrator, the plaintiff/appellant become eligible for the arrears for pay for the suspension period also. Again, as the plaintiff/appellant has completed 8 years of service in 1988, the plaintiff/appellant became eligible for one additional increment as per Haryana Government policy from the year 1992 as made applicable to all the employees of the market committee by the board but the said additional increment was not granted to the plaintiff/appellant, inspite of representation made to the defendant. The plaintiff/appellant was also entitled to get first higher standard scale of pay w.e.f. 1.1.1994 for having completed 10 years of satisfactory service before 31.12.1993 as per Haryana Government policy as enforced in Market Committee but the pay of the plaintiff/appellant was not fixed in higher scale despite request made by him. The plaintiff/appellant made representation on 29.5.1995 which was received by the defendant vide diary No.58 dated 6.6.1995 but the same was ignored deliberately. Legal notice under Section 31 of the Punjab Agricultural Produce Market Act, 1961 was served upon the defendant through counsel dated 10.1.1996. Period of said notice also expired but the defendant again did not pay any heed to the request of the plaintiff/appellant and finally refused a



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week back from releasing the benefits. Defendant No. 2 is the dealing officer and he deliberately refrained from doing his duty and so he was being impleaded as defendant No. 2 for getting his responsibility fixed. When the plaintiff/appellant met with refusal of the defendant on 23.12.1996 he was left with no option except to file the civil suit.

3. Upon notice, defendants appeared and filed written statement wherein apart from taking preliminary objections of maintainability of suit, suit being bad for non-joinder of necessary parties, plaint being not properly valued for the purpose of court fees have controverted all the averments made in the plaint while stating that although the appeal filed by the plaintiff/appellant was accepted by the Chief Administrator but the case was remanded back for taking necessary action afresh after observing the procedure and the appeal was accepted only on the ground that the punishment was awarded to the plaintiff/appellant without regular inquiry.

4. Rejoinder to the written statement was filed wherein all the averments made in the plaint were reaffirmed and those made in the written statement were denied.

5. From the pleadings of the parties, following issues were framed:-

1. *Whether the plaintiff is entitled to his salary and allowances for the period from 4.8.1993 to 15.3.1994?*

*OPP.*

2. *Whether the plaintiff is entitled to an additional increment after completing 8 years of service in 1988?*

*OPP.*



3. *Whether the plaintiff is entitled to First Higher standard scale of pay w.e.f. 1.1.1994 for having completed 10 years before 31.12.9370PD.*
4. *Whether defendant No. 2 is unnecessarily party?OPD*
5. *Whether the suit is bad for non-joinder of Haryana State Agricultural Marketing Board?OPD.*
6. *Whether the suit is not properly valued for the purposes of court fees and jurisdiction?OPD.*
7. *Whether the suit is not maintainable as the plaintiff has other effecacious remedy?OPD.*
8. *Relief.”*

6. After hearing both the parties and the perusing the whole record, the learned Civil Judge (Junior Division), Jind allowed the suit filed by the appellant on 19.09.1997.

7. The appeal preferred by the respondent against the judgment and decree dated 19.09.1997 was allowed by the learned Additional District Judge, Jind, vide judgment and decree dated 09.02.1998. Hence, the present appeal.

#### **SUBMISSIONS OF COUNSEL FOR THE PARTIES**

8. Learned counsel for the appellant submits that the learned First Appellate Court did not appreciate the facts on record and allowed the appeal filed by the respondent.

9. Per contra, learned counsel for the respondent contends that the appeal has rightly been allowed by the learned First Appellate Court.



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10. I have heard learned counsel for the parties and perused the whole record of this case. Relevant portion of the judgment dated 19.09.1997 passed by the learned Civil Judge (Junior Division), Jind is reproduced as under:-

***“Issue No.1.***

6. *Learned counsel for the plaintiff submitted that the plaintiff joined the market committee as permanent employee in 1980 and continuous on the said post without interruption. The plaintiff was suspended on 4.8.1993 but was reinstated on 15.3.1994. When the appeal was made to Chief Administrator Market Committee, Panchkula, the order of market committee regarding stoppage of increment and pay of the plaintiff was set aside, the copy of which is Ex.P1. When after the order of Chief Administrator, no efforts were made by the marketing board to release the pay and increment of the plaintiff, then the plaintiff served legal notice through Sh. J.B. Goel, Advocate and its copy is Ex.P2 and postal receipts are Ex, P3 and P4. After the order of Chief Administrator, Panchkula, no enquiry was started against the plaintiff till now. As such the plaintiff is entitled to claim increment on completion of 8 years of service and is also entitled to be placed in first higher standard scale of pay for having completed 10 years of satisfactory service from 1.1.1994. PW2 Sat Narain Sharma stated that the plaintiff is employee of market committee, Julana. He was appointed on 29.11.1980 as Sweeper on permanent post. He stated that till now no action has been taken against the plaintiff regarding*



*enquiry which was directed to be made against him by the Chief Administrator, Marketing Board, Panchkula by observing regular procedure. He admitted that the plaintiff had given representation Ex. P10 and legal notice Ex.P2 to their office. He admitted that after charge-sheeting the plaintiff again, no action has been taken till now and no decision has been taken about the suspension period of plaintiff which was from 1.8.1993 to 15.3.1994 which was resent by Chief Administrator, Panchkula. PW2 Sat Narain Sharma also stated that according to service book one additional increment has already been given to the plaintiff vide resolution dated 14.10.1992 and now the plaintiff is not entitled to claim any other additional increment. Also plaintiff is not entitled to be placed among first higher standard scale of pay. PW2 Sat Narain Sharma also stated that the decision about the suspension period of the plaintiff taken by the marketing board would be followed by the market committee, Julana and action would be taken against the plaintiff accordingly. Learned counsel for the plaintiff also relied upon Rai Kumar Vs. State of Haryana (P.H.D.) 1997(3) S.C.T., wherein it was held that "where the employee is reinstated pending enquiry without prejudice to enquiry, his annual increments and salary for the suspension period cannot be withheld merely on the ground that an enquiry is contemplated against him."*



7. *Learned counsel for the defendant submitted that DW2 Partap Singh in his statement stated that additional increment is given after completion of 8 years service in satisfactory manner but enquiry regarding completion of 8 years of satisfactory service of the plaintiff is still pending but he also admitted that except the allegation that the plaintiff had misused the market committee tractor without any permission and violated the Government employees conduct Rules 1966, no other dis-satisfaction was ever observed in the service of the plaintiff and denied that they had stopped the pay and increment of the plaintiff in order to harass him. He stated that it is correct that the plaintiff is the employee of market committee, Julana and he cannot be transferred anywhere as such. On perusal of oral and documentary evidence adduced, I am of the opinion that DW1 Partap Singh himself stated that except the allegation framed against the plaintiff on account of which he was suspended from 4.8.1993 to 15.3.1994, no other dissatisfaction was ever observed in the service of the plaintiff. Therefore, it cannot be said that the plaintiff has not rendered the satisfactory service of 8 years continuously. This issue regarding payment of salary and allowances for the suspension period from 4.8.1993 to 15.3.1994 alongwith all the arrears goes in favour of plaintiff and against the defendant.*

**ISSUE No. 2.**

8. *Learned counsel for the plaintiff argued that from the evidence of DW1 Partap Singh, it is evident that the plaintiff has completed 8 years of satisfactory service. During 1980 to 1988 no complaint was ever levelled against him. It is true that the plaintiff was suspended on 4.8.1993 but it was only on the ground that the plaintiff had misused the tractor of the market committee, Julana and as such violated the Government employees conduct rules. But Chief Administrator, Panchkula reinstated the plaintiff after setting aside the order of market committee, Julana and directed the market committee, Julana to start fresh enquiry against the plaintiff but after that order no action has been taken against the plaintiff till now. Learned counsel for the defendant submitted that plaintiff completed 8 years of satisfactory service in 1988 but what was plaintiff doing till the filing of the present suit on 22.1.1977. Learned counsel for the defendant submitted that the claim of the plaintiff regarding additional increment after completing 8 years of service in 1988 is clearly time barred because he should have filed the suit for the said purpose before 1997 because by the Haryana Government policy of 1992 plaintiff had become entitled to claim additional increment on the ground of 8 years of service. Learned counsel for the defendant relied upon State of Punjab Vs. Babu Singh, Head Constable (P&H) 1996(2) S.C. T. page 91, Punjab State Vs. Darshan*



*Kumar, S.C. 1996(2) S.C. T. page 208, wherein it was held that whose orders of stoppage of increment are challenged after expiry of 3 years, they cannot be quashed and Article 113 of Limitation Act is attracted. Thus, in view of the authorities cited above, the claim of the plaintiff that he is entitled to additional increment on the ground of completion of 8 years of service vide Haryana Government policy of 1992 is clearly time barred. Thus, this issue goes in favour of defendant and against the plaintiff.*

**ISSUE No. 3.**

*Learned counsel for the plaintiff submitted that the plaintiff is entitled to be placed in first higher standard scale of pay w.e.f. 1.1.1994 for having completed 10 years of service before 31.12.1993 as per Haryana Government policy. He stated that the plaintiff had made representation on 29.5.1995 which is Ex.P5 which was received in the office of defendant vide diary No.58 dated 6.6.1995 but the defendant deliberately ignored the same and did not concede to the request of the plaintiff. Learned counsel for the defendant submitted that there is no law that a person should be given both the benefits, first on completion of 8 years of service and second on completion of 10 years of service, he can claim only one benefit. Learned counsel for the defendant referred to Section 31 of Punjab Agricultural Produce Markets Act, 1961, whereby the suit should be brought within six months from the date of accrual of*



*cause of action and as such, this relief is also time barred*

*Learned counsel for the plaintiff in answer submitted that in the written statement defendant has submitted that the case of the plaintiff is pre-mature on one side and on the other hand, learned counsel for the defendant is saying that the claim of the plaintiff is clearly time barred. He stated that the defendant should take one attitude whether the suit is pre-matured or whether the sit is time barred. Learned counsel for the plaintiff submitted that they had made representation regarding the same on 29.5.1995 but no reply was given to them. At least they could have stated that the claim of the plaintiff was time barred but nothing was received by the plaintiff. Learned counsel for the plaintiff again submitted that as they had made the represen- tation on 25.9.1995 their claim of being placed among first higher standard scale of pay is not time barred because cause of action had accrued after representation. Learned counsel for the defendant submitted that the suspension order of the plaintiff had been set aside because regular procedure was not observed by the defendant and it was not decided on merits. In answer to that question learned counsel for the plaintiff submitted that it was default of the defendant and for their default the plaintiff should not be made to suffer. Also when the defendant was directed to start enquiry against the plaintiff, the defendant did not start any enquiry after the said order also till now. Learned counsel for the*



*plaintiff again submitted that before filing of the present suit they have also issued legal notice under Section 31 of Punjab Agricultural Produce Markets Act, 1961 through counsel on 10.1.1996. When the period of notice expired and no reply was received by them then they filed the present suit and as such their claim is within limitation. In view of the aforesaid reasoning I am of the confirmed opinion that claim of the plaintiff of being placed in first higher standard scale of pay w.e.f. 1.1.1994 for having completed 10 years of service is within limitation because they had made representation on 29.5.1995 and again they had served legal notice on 10.1.1996. As such their claim is within period of limitation and this issue goes in favour of plaintiff and against the defendant.*

**ISSUE No.8 Relief:**

*12. In view of aforesaid reasoning the suit of the plaintiff succeeds and the same is decreed with declaration to the effect that the plaintiff is entitled to get his full pay and allowances for the period from 1.8.1993 to 15.3.1994 and he has also entitled to be placed in first higher standard scale of pay w.e.f. 1.1.1994 for having completed 10 years of service alongwith arrears of such benefits with interest at the rate of 18% per annum with the direction to the defendant for computing and releasing the due amount, alongwith costs of the suit. Decree-sheet be prepared. File be consigned to the record room after due compliance.”*



11. Relevant portion of the judgment dated 09.02.1998 passed by the learned First Appellate Court is reproduced as under:-

*“7. Counsel for the appellant has argued that the trial court wrongly decreed the suit because section 31 of the Act requires that every suit which may be instituted or against the Agricultural Marketing Board or Committee or against any members or employee thereof, has to be instituted within six months from the date of accrual of cause of action and also a notice showing the intention to file such suit has to be served before hand. In the present case notice was served but the suit was filed much beyond the period of limitation as laid down in section 31(2) of the Act. The said aspect was not considered by the trial court. So far as denial of increment after completing eight years of service is concerned, the trial court in any case rejected the relief to the respondent- plaintiff on the ground of limitation, but limitation was taken as three years. In any case taken from all angles the claim of the plaintiff qua said increment is barred and, therefore, no interference is called for in the result of issue No.2.*

*8. As regards issues No.1 and 3 the trial court was also required to discuss the aspect of limitation as laid down in the Act. The court while mentioning that the defendant had referred to section 31 of the Act, all the same held that the defendants did not stick to one defence because at one time they were asserting that the suit was pre-mature and at the other time they*



*were asserting that it was time barred. This, however, was no ground for holding that the suit was within limitation despite specific law laid down in section 31 of the Act. It was for the trial court to see the aspect of limitation even if a particular defence to that effect had not been taken. Once section 31 was brought to its notice, it was bound on duty of the court to see whether such provisions of law did or did not apply to the present case and whether the suit was within limitation. The defendants had taken the plea of pre-maturity on the ground that the matter of suspension was still not finally decided. That aspect had nothing to do with the right of the plaintiff to file the suit which he had to file in accordance with the provisions of section 31 of the Act. He issued a notice under the said Act being aware that such a notice was required. He thus, cannot say that he was not aware that the suit was to be filed within six months from the date of cause of action. Even otherwise, ignorance of law is no excuse.*

*9. It has come on record in the evidence of the defendants by way of the statements of the official witnesses that the matter has not yet been finally decided and that final report is still awaited because the matter has been referred to the Board concerned for finalization. That way the plea of the defendants was justified that the suit was pre-matured. Unless the matter is finally decided by the department, the plaintiff could not have come to the court. Thus, relief granted to him under issues No.*



*1 and 3 was also not justified because his suit was not filed as per the provisions of Section 31 of the Act and also because the matter has not yet been finally decided against him. The findings on issues No. 1 and 3 are revised holding the same against the respondent-plaintiff for the reasons mentioned above.”*

### **ANALYSIS OF RECORD**

12. The admitted fact in this case is that Partap Singh, who was examined as DW-1 stated that the plaintiff/appellant completed 08 years of satisfactory service. He further stated that during the period from 1982 to 1989 no complaint was ever recorded against the plaintiff/appellant. The appellant was suspended on 04.08.1993 on the ground that he had misused the tractor of Market Committee, Julana and as such violated the Government Employees Conduct Rules but the Chief Administrator, Panchkula reinstated the appellant after setting aside the order of Marketing Committee, Julana and directed the Market Committee to start a fresh inquiry against the plaintiff/appellant but after that no action was taken against the appellant. The appellant retired from service on 31.12.2016.

13. A perusal of the record further shows that the learned First Appellate Court on the one hand decided issue No.1 against the appellant on the ground that the matter regarding the suspension period of the appellant was not finally decided whereas on the other hand it has been held that suit was premature since the final report of the appellant/respondent was awaited. Learned First Appellate Court further held that the relief granted to the appellant under Issue No.1 & 3 was not justified because his suit was not filed as per the provisions of Section 31 of the

**Act and also because the matter was not finally decided against him.**



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14. This finding of the First Appellate Court is not acceptable to this Court on the ground that on one hand, he has decided issues on merits and on the other hand he is holding that the suit was barred by limitation and further that it was premature and rather three contradictory observations/decisions are taken in one appeal.

15. In view of the above, the appeal is allowed. The judgment and decree dated 09.02.1998 passed by the First Appellate Court is set aside and the judgment and decree dated 19.09.1997 passed by the learned trial Court is upheld.

16. Decree-sheet be drawn accordingly.

17. Pending applications, if any, also stand disposed of..

October 22, 2024  
A.Kaundal

**(SUDEEPTI SHARMA)**  
**JUDGE**

Whether speaking/non-speaking : Speaking  
Whether reportable : Yes/No