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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**RSA-4577-2001 (O&M)
Date of Decision : 15.10.2024**

Jagannath

....Appellant

VERSUS

State of Haryana and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Parbeen Dhawal, Advocate, and
Mr. Ashish Arora, Advocate, for the appellant.

Mr. Harish Nain, AAG Haryana.

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SUDEEPTI SHARMA, J (Oral).

The present appeal is filed against the judgment dated 16.08.2001 passed by the learned Additional District Judge, Kurukshetra, whereby the appeal filed by the respondent against the judgment and decree dated 03.10.1997 passed by the Civil Judge (Junior Division), Kurukshetra, was allowed.

2. The brief facts stated in Civil Suit No.3022 of 1992 are that the appellant filed a suit for declaration with consequential relief of mandatory injunction brought by the plaintiff against the defendants with the prayer that plaintiff be declared senior to defendant Nos. 6 to 9 and he be given other back wages. It was further averred that he was appointed as work charge (Stacking) Morter Mate by the defendants on 23.02.1971 and he joined the duty on 24.02.1971 at Shahabad Markanda, Tehsil Thanesar, District Kurukshetra. Plaintiff is matriculate. Further that, his work and conduct was found satisfactory. No red

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entry was made in his A.C.R., however, he was not allowed to work from 13.07.1972 to 31.12.1973. Later on this period was treated to be leave without pay and he was allowed to work from 01.01.1974 onwards. He was promoted as work Supervisor on 01.07.1979 and now working as such. Defendants No. 6 to 9, namely Ajmer Singh, Lal Singh, Karnail Singh and Babu were also not allowed to work since 12.07.1972 and they were recalled by the defendants in the year 1973. They were promoted as work supervisors in 1975. Karnail Singh and Babu were promoted in 1974. Plaintiff made several representations but to no avail. His services were regularised on 03.07.1980. Defendants have not prepared any seniority list and juniors to plaintiff are working as Work Supervisor since 01.03.1973. He requested the defendant-department to promote him accordingly but of no use.

3. Upon notice defendant-respondent Nos. 1 to 5 (official respondents) appeared and stated in the reply that the suit of the plaintiff-appellant is not maintainable. Defendant-respondent Nos. 6 to 9 (private respondents) stated that the plaintiff-appellant remained silent for a period of 15-20 years, when his juniors were promoted, therefore, he could not file a suit at a belated stage.

4. On the pleadings of the parties, following issues were framed by the learned Trial Court:-

- 1) Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for? OPP
- 2) Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP
- 3) Whether the suit is time barred? OPD
- 4) Whether the suit is bad for want of notice u/s 80 of CPC? OPD



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- 5) Whether the suit is not maintainable? OPD
- 6) Whether the present suit is liable to be stayed u/s 10 CPC? OPD
- 7) Whether the suit is bad for non-joinder or necessary parties?
OPD
- 8) Relief.

5. The civil suit filed by the plaintiff-appellant was allowed vide judgment and decree dated 03.10.1997. The defendant-respondent Nos. 1 to 5 filed an appeal against the said judgment and decree dated 03.10.1997 and the learned first Appellate Court allowed the appeal vide its judgment dated 16.08.2001. Hence the present appeal.

6. Learned counsel for the plaintiff-appellant contends that the learned first appellate Court while reversing the well reasoned judgment of the learned Trial Court has failed to appreciate the reasons given by the learned trial Court while decreeing the suit of the plaintiff-appellant. He further contends that the plaintiff/appellant despite was senior to the private respondents and benefit of seniority and promotion was wrongly denied to the appellant.

8. *Per contra*, learned State counsel contends that the learned first Appellate Court has rightly allowed the appeal filed by the respondents on the ground that the suit filed by the plaintiff-appellant in the year 1992 was barred by limitation, therefore, the present appeal be dismissed on the same ground. In support of his contention, he has relied upon the judgment of Hon'ble Supreme Court in the case of **Shiba Shankar Mohapatra & Ors. Vs. State of Orissa & Ors** [2010 AIR (Supreme Court) 706]. Para 29 of the same is reproduced as under:-

“29. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in



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existence for a reasonable period, any challenge to the same should not be entertained. In K.R. Mudgal (supra), this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation.”

9. I have heard learned counsel for the parties and perused the whole record of this case.

10. The relevant portion of the judgment dated 03.10.1997 passed by the learned Trial Court is as under:-

“19. Learned counsel that plaintiff submits that the plaintiff joined the services on 24.02.1971. Defendant No.6 Ajmer Singh joined the service on 13.5.1971. Defendant No.7 Lal Singh joined the department on 23.4.1971 and defendant No.8 Karnail Singh joined the department on 18.5.1971 and defendant No.9 Babu joined the department on 05.11.1971. He submits there is no criteria for fixing the seniority except length of service. Plaintiff has joined the service first of all, therefore, he is senior to them. He further submits that plaintiff was never punished, no adverse entry is in his service record, therefore, plaintiff is entitled to be declared senior to defendants no. 6 to 9.

20. Learned Govt. Pleader submits that plaintiff remained silent for a period around 20 years. He filed this suit in the year 1992



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and prior to it he has not raised any objection and filed any representation. He submits that seniority list was prepared twice, once in the year 1985 and again in year 1996. It was circulated amongst its employees as is clear from Ex.D-5 and Ex.D-6 but plaintiff never objected this seniority list and therefore, at this stage he is barred from raising any objection. Claim of the plaintiff is not only time barred but is also suffered from delay and laches, therefore, his prayer should be rejected.

21. *No doubt, plaintiff has joined the department before defendants Nos. 6 to 9. There is again no doubt that as per length of service he is senior to defendants No.6 to 9. It is also not proved on the file that there is any other criteria for fixing the seniority except length of service and this length has to be counted from the date of joining which admittedly goes in favour of plaintiff. Claim of the defendants that seniority list was prepared twice may be true but another contention that it was circulated amongst its employees is absolutely baseless without substantiate. Even defendant Lal Singh, while appearing in the witness box was not aware about any seniority list. So this contention of the defendants is rejected.*

22. *That there is another ground of delay to object the claim of the plaintiff. Admittedly, plaintiff joined the service prior to defendants No. 6 to 9 but defendant Lal Singh was promoted in the year 1973 and plaintiff did not raise any objection against his promotion. Other juniors were also promoted but he again remained silent so in this regard this palpable delay of 20 years is not*



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explained so no declaration can be issued in his favour. However, defendant department is at liberty to consider his claim and decide it according to merits.

23. As far as limitation is concerned, plaintiff got cause of action whenever his seniority list was violated, therefore, suit of plaintiff is held to be not barred by limitation. Accordingly, both these issues are decided in favour of plaintiff and against the defendants. .

11. The relevant portion of the judgment dated 16.08.2001 passed by the learned first Appellate Court is as under :-

“15. Defendant No.6 Ajmer Singh, Defendant No.7 Lal Singh, Defendant No.8 Karnail Singh and Defendant No.9 Babu Ram were on 17.9.1973, 13.6.1973, 1.3.1974 and 18.2.1974 respectively. Defendant No.6 Ajmer Singh was also promoted as Works Inspector on 01.03.1974 and defendant No.7 Lal Singh was promoted as Works Inspector on 18.02.1974. After remaining absent from duty from 12.07.1972 to 31.12.1973, the plaintiff had joined his duty on 01.01.1974. After 01.01.1974, the plaintiff must have come to know that defendant No.6 Ajmer Singh and defendant No.7 Lal Singh were promoted as Works Mistri on 17.09.1973 and 13.06.1973 respectively. Defendant No.8 Karnail Singh and defendant No.9 Babu Ram promoted as Works Mistri on 01.03.1974 and 18.02.1974, respectively after the plaintiff had already joined his duty on 01.01.1974. Regarding defendant No.8 Karnail Singh and defendant No.9 Babu Ram also, he must have come to know that they were promoted on 01.03.1974 and 18.02.1974 respectively. Defendant No.6 Ajmer



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Singh and defendant No.7 Lal Singh were promoted as Works Inspectors on 01.03.1974 and 18.02.1974. Regarding defendant No.6 Ajmer Singh and defendant No.7 Lal Singh also, he must have come to know that defendant No.6 Ajmer Singh was promoted as Works Inspector on 01.03.1974 and defendant No.7 Lal Singh was promoted on this post on 18.02.1974. Even if for the sake of argument, it was taken that the plaintiff could not know about the dates of promotion of defendant No.6 to 9, prior to 07.08.1977, when the decision regarding the period of his absence w.e.f.12.07.1972 to 31.12.1973 was taken, the plaintiff would file this suit within period of three years from 08.06.1977. In the plaint, it was nowhere pleaded that any representation was made by the plaintiff to defendant Nos. 1 to 5 regarding his promotion and seniority. The plaintiff has not placed on the file the copy of representation, given by him to defendant No.1 to 5, regarding his promotion and seniority. The plaintiff has not placed on the file the copy of representation, given by him to defendant No.1 to 5 regarding his promotion and seniority. Had the plaintiff given any representation to defendant No.1 to 5 regarding his promotion and seniority, he must have pleaded this fact in the plaint and place a copy of such representation on the file of this case. All this has not been done by the plaintiff. The statement of DW-1 Anant Ram which has been referred to by learned counsel for plaintiff Jagan Nath during the course of argument, shows that the plaintiff had written to the Department praying that his service book be traced. On the basis of material on the file, it cannot be said that the plaintiff had



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made any representation to defendants No.1 to 5 regarding his promotion and seniority and the same was not decided by the Department till filing of the suit. The authority 1996(1) SLR 241, referred to by learned counsel for the plaintiff Jagan Nath does not seem to be of any help to the plaintiff in the light of the facts of the present case. A perusal of letter dated 11.09.1985 Ex.D-5 which was sent by the Superintending Engineer Ambala Circle, PWD B&R Br. Ambala Cantt., to the Executive Engineer, Ambala Provi. Division No.1 & II, Kurukshetra Provi. Division No.1 & II PWD, B&R Br. Kurukshetra shows that vide this letter seniority list of Works Mistri as on 31.08.1985 was sent by Superintending Engineer, Ambala Circle, P.W.D B&R Branch, Ambala Cantt., to the Executive Engineer, Ambala Provi. Division No.1 & II, Kurukshetra Provl. Division No.1 & II P.W.D B&R Branch Kurukshetra. All this shows that the plaintiff must have come to know about the position of seniority in the month of September, 1985. In my opinion, the present suit which was filed on 29.08.1992 was patently barred by limitation and because of this reason, the same was liable to be dismissed.

16. *In view of the above discussion, I hold that the impugned judgment and decree passed by the learned trial Court were illegal. I set aside the same and dismiss the suit of the plaintiff. The appeal No.215 of 1999 filed by the State is accepted with costs and the appeal No.11 of 2000 filed by the plaintiff Jagan Nath is dismissed with costs.”*

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12. A perusal of the above shows that the private respondents were promoted in the year 1973 and the civil suit was filed in the year 1992. I do not find any infirmity in the judgment passed by the learned first Appellate Authority dated 16.08.2001, since it is detailed and well reasoned. Civil suit filed by the appellant was highly belated since it was filed after almost 19 years from the date of cause of action. Hence the civil suit was not maintainable and it has been rightly held by the learned first Appellate Court, vide its judgment dated 16.08.2001.

13. In view of the above and in view of the judgment of Hon'ble Supreme Court in the case of *Shiba Shankar Mohapatra & Ors (supra)*, I do not find any infirmity in the judgment dated 16.08.2001 and the same is upheld. Accordingly, the present appeal is dismissed.

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

October 15, 2024
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(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes