

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

RSA No.3000 of 1988 (O&M)

Date of decision : 01.09.2015

Om Parkash

...Appellant

Versus

Kurukshetra University & ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Prashant Vashisht, Advocate for the appellant.

Mr. A.S. Virk, Advocate for respondents.

AMIT RAWAL, J. (Oral)

The appellant had filed the suit for declaration with the consequential relief of mandatory injunction, which had been decreed and respondents-defendants have been directed to count the service of plaintiff from 20.03.1974 to 18.06.1975 towards his probation and confirmation on the same regular post.

The trial Court on the basis of oral and documentary evidence decreed the suit vide judgment passed in 1987. The aforementioned judgment and decree was assailed by the respondents, i.e. defendants and the same has been accepted by the Lower Appellate Court vide judgment

and decree dated 18.08.1988 and the judgment and decree of the trial Court has been set aside. It is submitted that Lower Appellate Court has committed illegality and perversity in reversing the well reasoned judgment and decree by taking into consideration the Rules which according to the appellant would not be applicable as the Rules have been amended in 1979.

It has further been argued that there is already judgment rendered, where period of ad hoc service of similarly situated person has been counted and thus, the judgment and decree of the Lower Appellate Court suffers from illegality and perversity, much less, substantial questions of law arises for determination.

Mr. A.S. Virk, learned counsel appearing on behalf of respondents-defendants submits that as per the Rules and the proviso to the Rules, there is no provision for counting the ad hoc service for the purpose of confirmation, as well as, giving benefit of seniority and further submits that Lower Appellate Court has rightly set aside the judgment and decree by relying upon aforementioned Rules.

I have heard learned counsel for parties and appraised the paper book.

It is a matter of record that appellant was appointed on the post of Clerk-cum-typist on 20.03.1974 on ad hoc basis and he was confirmed on 18.06.1975. The claim, that aforementioned period of ad hoc service be counted towards the seniority and other benefits, in my view is not sustainable as there is no provision in the Rules for granting such benefit.

The judgment sought to be relied, is not applicable to the present case but would be applicable in such cases where the persons were

regularly appointed. Even as per the Rules, it has been categorically mentioned that persons who have appointed on ad hoc basis, their period of ad hoc service cannot be counted for the purpose of benefit which has been sought in the suit. Even otherwise suit in my view ex facie was time barred, inasmuch as that, cause of action accrued in the year 1975 when plaintiff was confirmed. Suit has been filed in 1985 & for seeking declaration limitation is three years. Cause of action cannot be said to be recurring for a period of 10 years.

In my view following substantial question of law arisen for determination of the present appeal:-

1. Whether the appellant-plaintiff is entitled to benefit of ad hoc service towards probation and confirmation and as well as seniority.

There is another aspect of the matter. Since such benefit would have entailed into displacement of seniority and effect the parties who have not been impleaded in the suit, therefore, the suit was not properly filed and was liable to be dismissed on account of non-joinder of the proper and necessary parties.

In view of what has been observed above, questions of law noticed above is answered against the appellant-plaintiff and in favour of respondents-defendants.

Accordingly, appeal is dismissed.

01.09.2015

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**(AMIT RAWAL)
JUDGE**