

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

RSA No.183 of 2013 (O&M)

Date of decision: 10.12.2015

Banwari Lal

.....Appellant

Versus

Haryana State Agriculture Marketing Board & others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. N.C. Kinra, Advocate for the appellant.

Mr. Naveen Gupta, Advocate for the respondent No.1.

Ritu Bahri, J.

Plaintiff-appellant has filed the present second appeal against the judgment of reversal dated 22.09.2012 passed by the District Judge, Panchkula, whereby appeal filed by Haryana State Agricultural Marketing Board-defendant against the judgment and decree dated 01.05.2010 passed by Civil Judge (Senior Division), Panchkula, has been allowed and suit of the plaintiff-appellant for declaration seeking retrospective promotion as accountant w.e.f. 17.01.1991 and E.O.-cum-Secretary w.e.f. 30.06.1996 at par with the dates of promotion(s) given to his junior, has been dismissed.

Facts necessary for disposal of the present second appeal are that appellant-plaintiff was permanent employee of the responden-Board and had retired from service on 31.03.2000 on attaining the age of superannuation. At that time he was posted as Assistant Secretary, Market Committee, Kalanwali. He had joined the services as Fee Collector on 5.04.1963, whereas Kali Ram Naidu and Fakir Chand Gupta-respondent Nos.2 & 3 were appointed as Auction Recorders in the Market Committee,

Narwana on 15.11.1968 and 18.06.1969 respectively. It was further averred that aforesaid Kali Ram Naidu and Fakir Chand were promoted as Fee Collector on 15.11.1972 and 09.8.1979 respectively. Names of the plaintiff as well as defendant Nos.2 & 3, Kali Ram Naidu and Fakir Chand, appeared in the Seniority List at Sr. Nos.10, 208 and 238 respectively which was circulated on 01.12.1998 by the respondent-Board. Both these defendants were juniors to the plaintiff. After his retirement, the plaintiff-appellant came to know on 03.06.2008 that Kali Ram Naidu and Fakir Chand (who were juniors to him) had been given retrospective promotions vide order dated 08.05.2003 and 29.07.2008 respectively. As per plaintiff, he was legally entitled for promotion from the dates when his juniors namely Kali Ram Naidu and Fakir Chand were promoted, because all such promotions were strictly based on the seniority. Plaintiff made representation dated 11.06.2008, which was rejected by defendant No.1 vide order/memo dated 11.11.2008. Thereafter, plaintiff-appellant served a legal notice dated 1.09.2008, but to no avail. Hence the present suit.

Upon notice, defendant No.1 appeared and filed written statement taking preliminary objections that the plaintiff has no cause of action to file the present suit, suit barred by limitation and the Civil Court has no jurisdiction to entertain and try the present suit. On merits, relationship of employee and employer was admitted. It was stated that initial cadre of the plaintiff and defendant Nos.2 & 3 was different because plaintiff had joined the service of the defendant as Fee Collector in Market Committee Pehowa on 27.07.1979 whereas defendant No.2 was appointed as Auction Record in Market Committee, Narwana on 15.11.1968. Therefore, the plaintiff cannot seek benefit of promotion at par with the

defendant Nos.2 & 3. It was further stated that defendant Nos.2 & 3 were given promotions in the peculiar circumstances of their respective cases.

Defendant No.2 did not choose to file written statement, whereas in its written statement defendant No.3 took a plea that the contents of the plaint are matter of record. Thereafter vide order dated 2.6.2009 on account of their non appearance in the trial Court, they were proceeded against ex-parte.

From the pleadings of the parties following issues were framed by the trial Court:-

1. *Whether the plaintiff is entitled for a decree of declaration as prayed for?OPP.*
2. *Whether jurisdiction of the Civil Court to entertain and try the present suit is barred under the provisions of Section 42 of Punjab Agricultural Produce Markets Act, 1961?OPD.*
3. *Whether the suit of the plaintiff is not maintainable in the present form?OPD.*
4. *Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD.*
5. *Whether the plaintiff has no cause of action to file the present suit?OPD.*
6. *Whether the present suit is totally false, vexatious and the plaintiff has suppressed the material facts from the Court and has not come to the Court with clean hands?OPD.*
7. *Whether the present suit is hopelessly time barred?OPD.*
8. *Relief.*

After going through the evidence led by the parties, trial Court decreed the suit of the plaintiff-appellant. Reference was made to an order dated 18.12.1996 (Ex.P30), vide which objections made by the plaintiff against the seniority list were rejected. It was observed that this order was a

non speaking order. Hardeep Singh, Ram Murti and Ram Kumar Kataria were given retrospective promotions vide orders, Ex.P8, Ex.P10 and Ex.P11 respectively. It was not disputed by the defendant-Board that the plaintiff-appellant had joined as Fee Collector, Marketing Committee, Sirsa on 05.04.1963, whereas Kali Ram Naidu and Fakir Chand Gupta were appointed as Auction Recorders, Municipal Committee, Narwana, therefore, their inter se seniority could not be fixed. The suit of the plaintiff-appellant was decreed while holding him entitled to the retrospective promotions as Accountant w.e.f. 04.01.1971, as an Assistant Secretary w.e.f. 17.01.1991 and as EO-cum-Secretary w.e.f. 30.06.1996 at par with his juniors Shri Kali Ram Naidu and Shri Fakir Chand Gupta along with interest @ 12% per annum.

However, the lower appellate Court, on appeal, set aside the judgment of the trial Court and observed that in his plaint, the plaintiff had claimed that his name appeared at serial No.10 in the seniority list circulated by the Board in December, 1998. He had also mentioned that Kali Ram Naidu's name figured at serial No.208 and that of Fakir Chand Gupta at serial No.238. The plaintiff had retired in the year 2000. Kali Ram Naidu had been given retrospective promotion vide order dated 08.05.2003 when the matter was finalised before the Hon'ble Supreme Court, where he had given up his claim with regard to arrears of salary/remuneration. As per plaintiff, the cause of action arose to him on 03.06.2008 when he came to know that Kali Ram had been given retrospective promotion as Accountant vide order dated 08.05.2003 and when he received communication on 11.11.2008 that his representation had been rejected. The lower appellate Court has observed that the seniority list had been prepared in December,

1998 i.e. prior to retirement of the plaintiff and he was aware of the fact that Kali Ram Naidu and Fakir Chand Gupta were juniors to him, but he still kept quiet for 8 years after his retirement. The period of limitation could not be extended from December, 1998, when the seniority list was circulated, till his representation was decided in 2008, to enable the plaintiff to file a suit on 04.12.2008. On an earlier occasion, the plaintiff had made a representation claiming seniority over Hardeep. Since the plaintiff chose not to approach the Civil Court despite circulation of seniority list in 1998, fresh notice given by him would not give a fresh cause of action to seek parity of promotion with Kali Ram and Fakir Chand. Since the plaintiff had given no explanation with regard to filing of suit in the year 2008, merely because Kali Ram's case had been finalized before the Hon'ble Supreme Court in the year 2003, it would not extend the period of limitation for 10 years to claim the benefit of retrospective promotion. After 8 years of his retirement, the plaintiff is seeking notional promotion as well as arrears, which as per the judgment of the Hon'ble Supreme Court in *State of Haryana Vs. O.P. Gupta*, 1996 (2) SLR (SC) 466, was not admissible.

Heard.

The following substantial question of law arises for consideration in this appeal:-

“Whether the Government can take the objection of limitation while extending the benefit to similarly situated employees i.e. Kali Ram Naidu and Fakir Chand Gupta by giving them retrospective promotions as accountants or whether the judgment of lower appellate Court is liable to be set aside in view of the decision of Hon'ble supreme Court in *Union of India and another Vs. Shantiranjana Sarkar*, 2009 (2) SCT 44.”

The lower appellate Court has allowed the appeal of defendant-board on the ground that suit filed by the plaintiff-appellant was beyond the period of limitation, as he had approached the Court in 2008 i.e. eight years after his retirement. Reference, in this regard, was made to decision given by the Hon'ble Supreme Court in **State of Punjab & another Vs. Balkaran Singh**, AIR 2007 Supreme Court 641.

There is no dispute that as per the ratio of the above said judgment, a litigant has to be aware of his right and take necessary steps well within three years during his service career to claim any benefit, which had been deprived by the competent authority. It was obligatory on the part of the litigant to come to Court at the earliest or at least within a reasonable span of time to claim benefit of seniority etc. Belated approach is impermissible at one point of time, equity may exist but with delay it melts into total insignificance. At the same time, reference can be made to a judgment delivered by the Hon'ble Supreme Court in **Union of India and others Vs. Shantiranjana Sarkar**, 2009 (2) SCT 44. This was a case where a notification was issued in 1997 for filling up post of Postman/Mail Guard. A candidate of Scheduled Caste category was required to have only 30% marks for becoming eligible for appointment. The respondent was denied appointment on the ground being non qualified. The Hon'ble Supreme Court upheld the decision of the High Court and dismissed the appeal filed by Union of India in 2009 with costs of Rs.1,00,000/-. In that case, the result was published on 18.11.1997 and original application filed before Central Administrative Tribunal was dismissed on 12.09.2003 on the ground of limitation. The High Court had set aside the order and given a direction for appointment of the candidate on the said post. The Hon'ble

Supreme Court while dismissing the appeal, had observed as under:-

“13. If, thus, for the reasons known to the respondent that he was entitled to the benefit of the status of the Scheduled Caste in the Andaman and Nicobar Islands, irrespective of the fact that the advertisement issued recognized only two categories of reserve categories, viz. Scheduled Tribes and 'OC', there was no reason to deprive the respondent from the said benefit. Respondent, therefore, was not appointed because of a mistake committed on the part of the authorities of the appellants. They, thus, cannot be permitted to take advantage of the same.

Applying the ratio of the above said judgment to the facts of the present case, one Kali Ram Naidu, who had been denied promotion at the appropriate time, had filed a suit in the year 1998. Before the Hon'ble Supreme Court on 21.02.2003, he gave up his right to arrears w.e.f. 1997 and the appeal was modified accordingly. After grant of promotion to Kali Ram Naidu, Dharam Paul etc. were also promoted and RSA No.2358 of 2010 filed by respondent-Board against them has been dismissed by this Court vide judgment dated 10.03.2014. These employees were junior to Kali Ram Naidu and after the appeal filed by respondent-Board were dismissed, they were given the benefit of promotions.

In this case, the defendant-Board cannot plead bar of limitation denying the benefit of its own wrong, as held by the Hon'ble Supreme Court in Union of India's case (supra). Hence, the question of law is answered in favour of the appellant-plaintiff.

Resultantly, the impugned judgment dated 22.09.2012 passed by the lower appellate Court is set aside and that of the trial Court is upheld.

Allowed accordingly.

10.12.2015
ajp

(RITU BAHRI)
JUDGE