

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

**Regular Second Appeal No.5122 of 2013 (O&M)**

**Date of Decision: 04.02.2015**

Ram Niwas Singla

..... Appellant

Vs.

State of Haryana

..... Respondent

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH**

Present: Mr. Vijay Singla, Advocate for the appellant.

**JASWANT SINGH, J. (ORAL)**

The appellant-plaintiff was appointed as a Junior Engineer in the Haryana Irrigation Department on 07.11.1973 and posted at Sub Division, Tohana. In July, 1975, he was transferred to Western Jamuna Canal, Division Rohtak. He is stated to have retired on superannuation w.e.f. 31.05.2009. Just before his retirement, he stated to have served a legal notice dated 13.08.2008 followed by filing the present suit on 23.10.2008 for mandatory injunction for release of salary for the period July, 1975 amounting to ₹ 402/- along with the travelling allowance of ₹ 12.90 Paise allegedly illegally withheld by respondent No.3 and also an amount of ₹ 7,72,150.80/- towards interest on the withheld amount. To cover up the delay of almost 33 years, the appellant/ plaintiff is alleged to have filed repeated representations.

Upon notice, the defendants have categorically denied the receipt of the referred representations. It is further asserted that on handing over the charge on transfer, there was a shortage of certain materials including Cement and the Executive Engineer concerned being competent withheld the said released salary

along with the travelling allowance towards set off of such shortage of material. It is specifically pleaded that the plaintiff has deliberately not raised the issue earlier in order to await the retirement of the official concerned, which otherwise would have led to perhaps initiation of disciplinary proceedings.

The learned trial Court held that the receipt of the alleged representations was not proved. The learned trial Court further found that the defendants from the documents Ex.D-1 to Ex.D-10 had proved the shortages of items and dues of miscellaneous advances, which were adjusted against the recovery of the plaintiff. It is also noticed that the remaining due amount was also deposited by the plaintiff himself, which was due from him after adjustment of his salary for July, 1975 and the travelling allowance, as noticed in Para 17 of the judgment.

It is not in dispute that it was in the knowledge of the plaintiff that his salary for the month of July, 1975 had been released by his employer but withheld by the Executive Engineer concerned on account of such shortages. Hence, the learned trial Court besides dismissing the suit on merit also held that the same was barred by law of limitation. Since the cause of action concededly had accrued on 01.08.1975.

Dissatisfied against the same, the plaintiff filed an appeal, which has been partly allowed that the aforesaid recovery was effected without giving any opportunity of hearing to the plaintiff and without placing any order on record that any recovery was pending. The learned lower Appellate Court has acknowledged that the salary was released by the employer and withdrawn, however, was not disbursed to the plaintiff and the such disbursement being the recurring wrong, the suit could not be held to be barred by law of limitation. It thus proceeded to grant the arrears of salary for the month of July, 1975 as also the disbursement of the

travelling allowance bill along with interest at the rate of 7.5 % w.e.f. 13.08.2005 i.e. three years prior to service of the legal notice dated 13.08.2008. Hence, the present second appeal has been filed raising the following substantial questions of law:-

- (i) Whether learned A.D.J. despite his observation that “Non-Disbursement of salary is a continuing wrong and its recurrence on every month gives a Distinct Right and Separate Cause of action to the employee”, is right to confine appellant claiming his due amount of Rs.414.90/- (of 01.08.1975) with a Simple interest only for 5 years (from 3 years before of serving Sec. 80 CPC Notice to defendant-treating this first demand) and that too with a low interest rate of 7.5% per annum?*
- (ii) Whether, to prove giving of notices to defendant, it is necessary to place on record the postal receipts despite the fact that DW has specifically admitted that there was written communication of plaintiff and defendant in respect of demand of his said salary and bill since 1975 till 2008?*
- (iii) Whether, impugned order passed by learned A.D.J. is justified in true sense because in real it gave nothing to appellant/plaintiff despite decreeing his suit?*

Along with the appeal, an application bearing **C.M. No.13779-C of 2013** for condonation of 210 days in re-filing the present appeal has also been filed.

For the reasons stated in the application, supported by the affidavit of Sh. Manoj Kumar Palwal, Advocate, the delay of 210 days is condoned.

After hearing learned Counsel for the appellant at length, this Court finds that there is no substantial question of law involved for adjudication before this Court.

It is apparent that for the month of July, 1975, the salary of the appellant was withdrawn from the State Exchequer, however, withheld by the Executive Engineer along with amount of travelling allowance bill on account of

certain shortages of material Ex.D-1 to Ex.D-10 proved on file. It is also come on record that the plaintiff himself had paid the remaining amount of shortfall after such set off. It is also not in dispute that the plaintiff has failed to prove on record any of the alleged representations submitted by him prior to the issue of the legal notice dated 13.08.2008. Even otherwise, it is settled law that even filing of repeated representations does not extend the limitation to be calculated from the original date of accrual of the cause of action, which in the present case concededly had accrued on 01.08.1975.

The learned lower Appellate Court has shown undue leniency by holding that the said cause of action was a recurring cause of action, which this Court is handicapped to comment upon in the absence of any appeal filed by the State against such a finding on the issue of limitation. This Court further finds that the relief granted is much more than which the plaintiff is entitled.

In view of the above, this Court finds no ground to interfere in the present appeal, the same is hereby dismissed.

**February 04, 2015**  
**Gagan**

**(JASWANT SINGH)**  
**JUDGE**