

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

**Regular Second Appeal No.3340 of 2014 (O&M)
Date of decision: 04.08.2015**

Prem Kumar Passey

.....Appellant

Versus

State of Punjab and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Munish Jolly, Advocate,
for the appellant.

Ritu Bahri, J.

Plaintiff-appellant has come up in regular second appeal against the judgment of reversal dated 18.02.2014 passed by the District Judge, Patiala, whereby appeal filed by the defendants-respondents has been accepted and suit filed by the plaintiff has been dismissed with costs.

Prem Kumar Passey-plaintiff filed a suit for declaration to the effect that he was entitled to be designated as Private Secretary to Chairman, Punjab Public Service Commission w.e.f. 01.01.1987 and that of Under Secretary, Punjab Public Service Commission, Patiala w.e.f. 01.05.1996 to 31.03.1999 along with all consequential benefits.

Upon notice, defendant-respondents filed written statement and controverted the allegations levelled by the plaintiff.

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

1. Whether the plaintiff is entitled to declaration as prayed for?

OPP

2. Whether the plaintiff is entitled to mandatory injunction as prayed for? OPP
3. Whether the suit is time barred? OPD
4. Whether the suit is not maintainable? OPD
5. Relief.

Trial Court, after going through the evidence led by the parties, decreed the suit to the effect that plaintiff was entitled to be designated as Private Secretary to Chairman, Punjab Public Service Commission w.e.f. 01.01.1987 and that of Under Secretary, Punjab Public Service Commission, Patiala, w.e.f. 01.05.1996 to 31.03.1999 along with all consequential benefits.

However, the lower appellate Court reversed the findings returned by the trial Court and dismissed the suit of the plaintiff with costs. While dismissing the suit, it was observed that earlier also, the plaintiff had filed a Civil Suit No.2724-93T/03.09.86/97, which was decreed by the Court of Sh. U.S. Gera, the then Additional Civil Judge (Senior Division), Patiala, on 08.01.1996. The operative part of the judgment is as under:-

“In view of my findings on the above stated issues, the suit of the plaintiff succeeds and same is hereby decreed with costs to the effect that defendants No. 1 to 3 are directed to restore the seniority list of the plaintiff existing on the date of filing of the suit i.e. 03.09.86 qua Jagdev Singh defendant No.4 and show the plaintiff senior to Jagdev Singh defendant and the order dated 04.09.86 revising the seniority list and showing the plaintiff as junior to Jagdev Singh defendant No.4 is hereby quashed.”

Appeal against the said judgment was dismissed by the Additional District Judge, Patiala. State of Punjab did not file any appeal against the said judgment, but Jagdev Singh, against whom he was seeking seniority,

had preferred a regular second appeal before this Court. However, during

the pendency of said appeal, Jagdev Singh had expired. Thereafter, the plaintiff filed a petition under Order 21 Rule 32 CPC, wherein the Punjab Public Service Commission had informed that the seniority list as existed on 03.09.1986 was restored vide order dated 03.01.2006 and the plaintiff was shown senior to Jagdev Singh in terms of the orders of the Court.

Prior to the suit filed by the plaintiff-appellant in 1987, Jagdev Singh had filed a suit against the State of Punjab, including the present plaintiff-appellant, seeking declaration that he had been wrongly ignored for promotion to the post of Senior Scale Stenographer and the seniority list prepared by the Punjab Public Service Commission was wrong. However, the said suit was dismissed vide judgment dated 27.01.1981 passed by the Sub Judge Ist Class, Patiala. Appeal against the said judgment was dismissed by the Additional District Judge, Patiala vide judgment dated 04.04.1983. Feeling aggrieved, Jagdev Singh had filed RSA No.1853 of 1983, which was dismissed by this Court vide order dated 22.12.1983. Thereafter, the plaintiff-appellant had filed the present suit.

In the suit filed by the present plaintiff-appellant on 05.09.1987, he had filed an application for grant of temporary injunction restraining the defendants-respondents from changing the existing seniority list for promoting Jagdev Singh as Private Secretary in pursuance of the dismissal of his suit, civil appeal and regular second appeal. However, the relief of temporary injunction was declined vide order dated 19.08.1987 as it would amount to grant of pre-decision in a suit for mandatory injunction. Aggrieved by the said order, he filed civil appeal No.38 dated 27.08.1987, which was accepted by the Additional District Judge, Patiala vide judgment/order dated 23.01.1988 by granting him the relief of temporary

Commission and Chairman, PPSC, were directed not to disturb the old seniority list till the final disposal of the suit. Against that order, State of Punjab had preferred Civil Revision No.1391 of 1988 before this Court, which was dismissed vide order dated 27.07.1988. Thereafter, the plaintiff filed several representations dated 03.02.1988, 06.06.1988, 18.11.1988, 23.11.1989, 10.12.1990, 07.08.1991, 26.03.1992, 04.11.1994, 05.02.1996 and 12.04.1996 for grant him promotion as Private Secretary w.e.f. 01.01.1987, but to no avail. Consequently, he filed another suit i.e. Civil Suit No.272 dated 03.09.1986/1992, titled as 'Prem Kumar Passi Vs. State of Punjab and others', for mandatory injunction directing defendant Nos. 1 to 3 to restore the seniority list of the plaintiff as it was existing on 03.09.1996. In that suit, Jagdev Singh was impleaded as defendant No.4. The said suit was decreed by the Additional Civil Judge (Senior Division), Patiala vide judgment dated 08.01.1996, directing the defendants to restore the seniority from the date of filing of the suit i.e. 03.09.1986. Vide said judgment, the order dated 04.09.1986 revising the seniority list by showing the plaintiff as junior to Jagdev Singh, was set aside. Against the said judgment, Jagdev Singh and State of Punjab had filed separate appeals, which were dismissed by the Additional District Judge, Patiala vide judgment dated 20.03.1998. Thereafter, the plaintiff-appellant filed a representation dated 22.09.2004 through Secretary, Punjab Public Service Commissioner, Patiala, for grant of promotion as Private Secretary to Chairman, PPSC, Patiala, w.e.f. 01.01.1987 and further promotion as Under Secretary, PPSC, Patiala w.e.f. 01.05.1996 till the date of retirement with all consequential benefits.

The plaintiff-appellant had retired in the year 1999 and the present suit for declaration has been filed on 10.12.2008. In his earlier suit titled as

had sought direction to the defendants to restore his seniority list existing on the date of filing the suit i.e. 03.09.1986. At that time, the plaintiff could have sought declaration that he was entitled to be designated as Private Secretary to Chairman, PPSC w.e.f. 01.01.1987, but he had failed to do so. Therefore, the lower appellate Court has rightly held that the present suit was hit by Order 2 Rule 2 CPC, as such relief could have been sought initially at the time of filing of earlier suit by the plaintiff-appellant. As such, suit of the plaintiff-appellant has been rightly dismissed.

Having examined the judgment passed by the lower appellate Court, no illegality, much less perversity, has been found therein warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

04.08.2015
ajp

(RITU BAHRI)
JUDGE