

RSA No.5475 of 2014

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

RSA No.5475 of 2014

Date of Decision: August 17, 2015

Smt. Raj Kumari

...Appellant

Versus

The State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Anil Shukla, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (Oral):

Challenge in this appeal is to the judgments and decree passed by the Courts below by which the suit for declaration filed by the appellant-plaintiff for promotion to the post of Senior Assistant w.e.f. 01.01.1994 from the post of Clerk, has been declined on the ground holding that the suit is not maintainable as the same is barred by limitation and also on the ground that persons likely to be affected and who are juniors to the plaintiff-appellant, have not been impleaded as party respondents.

It is the contention of the counsel for the appellant-plaintiff and after passing of the judgment of the Supreme Court on 24.09.1999 in Civil Appeal No.11660-61 of 1995, 'Saroj Rani & others Vs. State of Punjab', she was granted promotion to the post of Senior Assistant w.e.f. 01.01.1995, whereas, she is entitled to the promotion

w.e.f. 01.01.1994, the date on which her juniors were promoted. He contends that the plaintiff-appellant had been representing the respondents for the grant of the benefit of deemed date of promotion i.e. 01.01.1994 but when the same was not responded to, plaintiff-appellant served a legal notice dated 28.01.2005 through registered post which was decided on 18.03.2005. On the decision of the legal notice by which the claim was rejected, the suit has been preferred on 17.08.2005 which is within a period of three years from the date of the decision of the legal notice. The suit, therefore, preferred by the plaintiff-appellant cannot be said to be time barred.

This contention of the counsel for the plaintiff-appellant cannot be accepted in the light of the fact that the plaintiff-appellant was promoted vide order dated 06.10.2000. She put forth her claim for promotion w.e.f. 01.01.1994 and the same was rejected on 18.05.2002. In-stead of challenging the said order, the plaintiff-appellant preferred to serve a legal notice which was already rejected in the light of the earlier rejection of the claim. The suit could have been filed within a period of three years from the date of initial rejection of her claim which admittedly, the appellant-plaintiff did not. Instead, she served a legal notice which was rejected on 18.03.2005 and on the date when the present suit was filed, it was beyond the period of three years from the date of initial rejection of her claim. Merely because, the earlier order has been reiterated while deciding the legal notice, it would not give a fresh cause of action to the

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appellant-plaintiff which would entitle her to assert that the cause of action accrued to her at this subsequent date. The finding of the Courts below with regard to the civil suit being time barred is in accordance with law.

That apart, none of the persons who are juniors to the plaintiff-appellant has been impleaded as a party respondent. The assertion of the counsel for the appellant-plaintiff that she is only seeking notional promotion and therefore, no one would be effected by such deemed date of promotion, is totally misconceived as number of posts earmarked for promotional quota are specified and if the plaintiff-appellant is granted promotion from the date on which person junior to her had been promoted, he would have to make a way for her. This ground also, therefore, cannot be said to be without any basis as effected parties have not been impleaded as respondents.

The judgments and decree passed by the Courts below being in accordance with law, do not call for interference of this Court. Further, no substantial question of law arises for consideration of this Court.

The appeal stands dismissed.

August 17, 2015
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE