

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

RSA No.726 of 1992

Date of Decision:18.11.2016

The State of Punjab and another ... Appellants

Vs.

Shiban Kumar ... Respondent

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Rahul Verma, A.A.G. Punjab.

Mr. Amit Arora, Advocate for the respondent.

P.B. BAJANTHRI J. (Oral)

In the instant appeal, the State of Punjab has questioned the validity of the trial court and appellate court orders dated 1.11.1988 and 13.9.1991 respectively.

The respondent was appointed as a clerk in the appellants-department on ad-hoc basis on 11.11.1966 (14.11.1966) through employment exchange and also after following due procedure. Thereafter his services were regularized on 1.1.1969. The appellants published seniority list of clerks in the year 1975 in which the respondent's ad-hoc service from 11.11.1966 (14.11.1966) to 31.12.1968 was taken note of while fixing the ranking at serial No.109. Thereafter one more seniority list was published by the appellant in the year 1979 wherein the respondent's name was pushed down while ignoring the ad-hoc services from 11.11.1966 (14.11.1966) to 31.12.1968. In other words, the date of appointment to the post of clerk has been taken note i.e. from the date of regularization w.e.f.

1.1.1969. The respondent feeling aggrieved by the ranking assigned in the

seniority list as well as in not counting ad-hoc service w.e.f. 11.11.1966 (14.11.1966) to 31.12.1968, he filed suit before the trial court on 28.4.1986. The suit was decreed on 1.11.1986 declaring that the service rendered by the respondent w.e.f. 11.11.1966 (14.11.1966) to 31.12.1968 as a regular service and countable for the purpose of seniority etc. The appellant-State aggrieved by the order of the trial court preferred an appeal before the appellate court. The appellate court while affirming the order of the trial court rejected the civil appeal No.91 of 1990 (89) filed by the appellant. Thus, the appellant has presented this appeal.

Question for consideration in the present appeal is (i) whether suit is barred by limitation or not? (ii) Whether the ad-hoc service rendered by the respondent w.e.f. 11.11.1966 (14.11.1966) to 31.12.1968 is countable towards grant of seniority and other consequential benefits etc. or not?

Learned counsel for the appellant contended that the respondent claim is to be rejected on the ground of limitation. In other words, the suit should have been rejected on the ground that suit is barred by limitation for the reasons that seniority list is of the year 1979 and the suit was filed on 28.4.1986. It was further contended that merely in an identical if relief has been granted that does not mean that the present respondent is entitled for similar benefit having regard to the facts of the present case. The present litigation is distinguishable with reference to the earlier litigation on the ground of limitation as well as not challenging the seniority or seniority list timely.

Learned counsel for the respondent submitted that even though respondent was appointed on ad-hoc/temporary basis on 14.11.1966, however, such appointment is in accordance with Rules. Therefore, the

service rendered as a temporary is required to be counted for the purpose of seniority and other benefits. Thus, rightly the trial court has decreed the suit and so also the appellate court affirmed the order of the trial court. It was further contended by the learned counsel for the respondent that similarly situated persons who are also before the judicial forum have been granted the benefit of counting the ad-hoc/temporary service rendered by them. Therefore, the present appeal is required to be rejected.

Heard learned counsel for the parties.

Admittedly, seniority list was notified in the year 1979 and the suit was filed on 28.4.1986. Thus, the suit is required to be dismissed on the ground of limitation. The Hon'ble Supreme Court in case of P.S. Sadasivaswamyy v. State of Tamil Nadu; 1975 (1) SCC 152 held that the grievance of an employee in relation to seniority and promotion one must approach within a period of six months/one year for the reasons that settled matter cannot be unsettled after lapse of time. Thus, the principle laid down in the case of Sadasivaswamyy (supra) is applicable to the present case. Hence, the trial court has erred in holding that the respondent is entitled for the relief sought while ignoring the fact that suit was barred by limitation.

The contention of the respondent that in an identical matter the relief has been granted by this Court and the same has been upheld by the Supreme Court, the same is distinguishable for the reasons that facts of the present case is entirely different having regard to the fact that respondent has filed the suit belatedly and moreover in the matter of seniority and promotion, one must approach the court at the earliest as held by the Supreme Court in the case of Sadasivaswamyy (supra). Thus, the appellant has made out a case so as to interfere with the order passed by the trial court

having regard to the fact that the suit is barred by limitation.

Accordingly, orders dated 1.11.1988 and 13.9.1991 passed by the trial court and appellate court are set aside.

The appeal stands allowed.

18.11.2016
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No