

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

RSA No.2047 of 1996

Date of Decision:15.11.2016

Director (Personnel) P.S.E.B. and others ... Appellants

Vs.

Harbhajan Lal through LRs ... Respondents

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

Present : Mr. J.P.S. Sandhu, Advocate for the appellants.

Mr. Gurcharan Dass, Advocate for the respondents.

P.B. BAJANTHRI J.

The appellants have questioned the validity of the appellate court order dated 12.9.1995 passed in Civil Appeal No.15 of 1994.

The respondent was appointed as a Upper Division Clerk on adhoc basis on 17.1.1977 in the appellants' organization. The respondent's services were regularized on 1.4.1978. Thereafter his seniority was fixed on 3.3.1980 while counting the service in the cadre of Lower Division Clerk w.e.f. 1.4.1978 the date on which the respondent's services were regularized. The respondent feeling aggrieved by the non-counting of adhoc service for the purpose of fixing seniority w.e.f. 17.1.1977, he filed a suit challenging the fixation of seniority vide communication dated 3.3.1980. Trial Court framed the following issues:

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

OPP

2. Whether plaintiff has no locus standi to file the present suit? OPD

3. Whether the suit is not maintainable? OPD

4. Whether the suit is time barred? OPD

5. Relief.”

The trial court after examining issue No.4 “whether the suit is

time barred or not” in para-9 of the order, it is made clear that there is a delay and the suit is barred by limitation. Feeling aggrieved by the order of the trial court, the respondent preferred an appeal before the appellate court. The appellate court on 12.9.1995 reversed the order of the trial court holding that fixation of seniority is a continuing cause of action. Therefore, adhoc service rendered by the respondent from 17.1.1977 to 31.3.1978 is required to be counted for the purpose of seniority and also to determine seniority at appropriate place. The appellant aggrieved by the order of the appellate court dated 12.9.1995 presented the present appeal.

Learned counsel for the appellant submitted that seniority of the respondent was fixed on 3.3.1980 whereas the suit was filed on 21.9.1991. Therefore, claim of the respondent is required to be rejected on the ground of delay and laches. Trial Court rightly held that suit was barred by limitation whereas appellate court reversed the order of the trial court holding that the fixation of seniority is continuing cause of action. Thus, the appellate court committed error in holding that the fixation of seniority is continuing cause of action. It is contrary to the decision in the case of **State of Punjab and others** v. **Gurdev Singh**; AIR 1991 SC 2219 Therefore, the appellate court order is to be set aside.

Per contra, learned counsel for the respondent submitted that his seniority was fixed on 3.3.1980 in the cadre of Upper Division Clerk while ignoring adhoc service. The policy of the State is that the adhoc service is required to be counted for the purpose of fixation of seniority. In this regard, he has submitted representation, the same was not considered by the appellant. Consequently, he was compelled to file suit before the trial court. The appellate court has rightly held that it is a continuing cause of

action so as to fix respondent's seniority at appropriate place while counting the adhoc service. There is no error committed by the appellate court and no interference is called for.

Heard learned counsel for the parties.

Short question for consideration in the present appeal is whether claim of the respondent for counting adhoc service towards fixation of seniority is permissible or not and further whether delay and laches would be hurdle for counting adhoc service and to re-fix seniority or not?

Perusal of the dates and events like the petitioner was appointed on 17.1.1977. His services were regularized on 1.4.1978 and seniority was determined on 3.3.1980. Thereafter, he has filed the suit for rectifying the seniority on 21.9.1991. The respondent claim is to be rejected on delay and laches. 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 must approach within a period of six months/one year for the reasons that settled matter cannot be unsettled after lapse of time. If there is a belated claim, the same cannot be entertained. In the present case, there is a delay of nearly 11 years in seeking rectification of seniority. Due to lapse of time between 1980 to 1991 certain developments must have taken place like promotion to the next higher cadre and so also extending certain monetary benefits and the same must have been extended to the senior/junior to the respondent. The same cannot be upset after lapse of one decade. Therefore, the appellate court wrongly held that it is a continuing cause of action. By virtue of fixation of seniority, rights have been created among others. The same cannot be scuttled after lapse of 10 years. Continuing cause of action

principle in the case of seniority is impermissible. Therefore, the appellate court committed error in holding that the fixation of seniority is continuing cause of action. Hence, appellate court order dated 12.9.1995 is set aside and the fixation of seniority of the respondent is upheld.

The appeal is allowed accordingly.

15.11.2016
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No