

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 2924 of 2013 (O&M)

Date of decision: 19.12.2016

M.D., DHBVN, Hisar and others

...Appellants

V/s.

Dharam Vir Sharma

...Respondent

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

Present: Mr. Puneet Malik, Advocate for the
Mr. Partap Singh, Advocate for the appellants.

Mr. R.N. Sharma, Advocate for the respondent.

P.B. BAJANTHRI, J. (Oral)

In the instant appeal, the appellants have assailed the order dated 04.02.2013 passed by the trial Court.

The respondent was appointed as Shift Attendant on 11.07.1975 on adhoc basis at Panipat Thermal Plant. While working as such his services were retrenched on 14.07.1977. He raised an industrial dispute. The Industrial Tribunal-cum- labour Court passed an order on 17.09.1982. By virtue of the award dated 17.09.1982 he was reinstated on 17.02.1983. His services were regularized w.e.f. 01.01.1980 for which he submitted a representation stating that he is entitled to regularization from the date of initial appointment on adhoc basis i.e. w.e.f. 11.07.1975. The appellants have considered his representation and altered the date of regularization from 01.01.1980 to 11.07.1975 on 11.02.1985. The respondent has not questioned the validity of the order dated 11.02.1985 by which his services have been regularized w.e.f. 01.01.1980. In the year 2008, the State of Haryana introduced a policy relating to grant of ACP etc. At that point of

time, the respondent realized that for the purpose of granting ACP and other consequential benefits, the service would be counted from 01.01.1980 and not from 11.07.1975. In the guise of seeking benefits of ACP while counting the service from 11.07.1975, the respondent has filed a suit before the trial Court on 28.10.2010 for declaration to the effect that the respondent is entitled to get his service regularized w.e.f. 11.07.1975 instead of 01.01.1980 and further sought for re-fixation of pay and consequential service benefits from time to time. The trial Court decreed the suit. The appellants aggrieved by the order of the trial Court preferred an appeal before the appellate Court. The appellate Court modified the trial Court order to the extent that the arrears are confined to three years preceding the date of filing of the suit which was filed on 27.10.2010 and it was ordered that the respondent is entitled to get his services regularized w.e.f. 11.07.1975 and not from 01.01.1980. Aggrieved by the orders of the trial Court and appellate Court, the present appeal has been filed by the appellants.

Learned counsel for the appellants submitted that suit filed by the respondent is highly belated and it is not within limitation on that score only the trial Court order as well as appellate Court order are liable to be set aside for the reasons that his date of regularization was ordered on 11.02.1985 by the appellants giving effect from 01.01.1980. Therefore, the cause of action accrued to the respondent on 11.02.1985 whereas the respondent has filed a suit only on 28.10.2010.

On the other hand, learned counsel for the respondent submitted that in view of the Govt. circular dated 16.11.1973 read with 30.01.1976 the adhoc service could count towards seniority and promotion.

Therefore, there is no infirmity in the order passed by the trial Court as well as the appellate Court having regard to the circular dated 16.11.1973 and 30.01.1976. There is no delay in seeking alteration of date of regularization from 01.01.1980 to 11.07.1975.

Heard the learned counsel for the parties.

Short question for consideration is whether the suit is within the time limit or not. The grievance of the respondent is relating to alteration of date of regularization from 01.01.1980 to 11.07.1975. The appellants have regularized the respondent's service on 11.02.1985 w.e.f. 01.01.1980. Cause of action accrued to respondent on 11.02.1985 whereas the respondent has filed a suit only on 28.10.2010. In the absence of alteration of date of regularization from 01.01.1980 to 11.07.1975, the respondent cannot claim any benefit under the Govt. circular dated 16.11.1973 and 30.01.1976. Since there is delay and laches on the part of the respondent for seeking the alteration in the date of regularization from 01.01.1980 to 11.07.1975. Therefore, both the trial Court and appellate Court have erred in granting relief by altering the date of regularization from 01.01.1980 to 11.07.1975.

The appeal is allowed. The orders of the trial Court and appellate Court are set aside. Reserving liberty to the respondent to seek ACP and other benefits on par with the juniors, however, if such benefits are not affecting the third party right. In such event, the respondent is entitled for the financial benefits for the reasons that extending such benefit is a continuous cause of action i.e. every month he would be getting reduced pay or pension, therefore, liberty is given to the respondent to approach the appellants. If such an application or representation is made, the same shall

be considered by the appellants within a period of six months from today.

December 19, 2016
Divyanshi

(P.B.BAJANTHRI)
JUDGE

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