

218

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

RSA-3319-2013

Date of decision: 15.01.2016

Kaur Singh

..... Appellant

VERSUS

State of Punjab and others

..... Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. J.S. Thind, Advocate for the appellant.

Mr. Neeraj Yadav, AAG, Punjab.

SABINA, J.

Appellant had filed suit for declaration to the effect that he was entitled for promotion as an Agricultural Development Officer from 22.06.2001 and with a further direction that the appellant was also entitled to recover monthly pay, all service benefits etc. after condoning the break period of 50 days from 12.11.1970 to 31.12.1970 and considering the same as service period.

The case of the appellant in brief was that he had retired as Agricultural Sub Inspector on 31.01.2004. He had joined the services of the defendants as Agriculture Sub Inspector on 23.05.1969. The details of the service period of

the appellant as mentioned in para I of the judgment of the trial Court reads as under:-

Sr. No.	From	To	Period Y-M-D	Name of Block	Office
i	23.05.1969	11.09.1969	0-0-19	Khal Khurd ACEO	Muktsar
ii	12.06.1969	11.11.1970	01.05.19	Fazilka	-do-
iii	12.11.1970	31.12.1970	---	Service break of 50 days	
iv	01.01.1971	31.01.2004	32.4.00	Patiala D.A.O	Patiala
				C.A.O	Sangrur
				C.A.O	Faridkot
				C.A.O	Bathinda
				C.A.O	Sangrur

The case of the appellant further was that after counting the ad hoc service the total length of the service of the appellant was 33 years 6 months and the same was sufficient to allow him full pension, gratuity and increase the amount of leave encashment and other benefits. The seniority of the appellant was liable to be re-fixed by taking into consideration his entire adhoc service and the break of 50 days from 12.11.1970 to 31.12.1970 was liable to be condoned.

Defendants in their written statement admitted the service period of the appellant. It was averred that the services of the appellant had been dispensed with w.e.f. 31.12.1970 as a regular Agriculture Sub Inspector had joined. The appellant was again re-appointed as Agriculture Sub Inspector on temporary basis on 01.01.1971. Consequently, the appellant could not be granted the benefit of his adhoc service from 23.05.1969 to

11.11.1970. Further the case of the defendants was that as per the seniority list name of the appellant figured at Sr. No.673 and his name for promotion could not be considered before Gurcharan Singh, Pal Singh, Harnek Singh and others as mentioned in the plaint.

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

- “(1) Whether plaintiff is entitled for declaration as prayed for ? OPP
- (2) Whether suit is within period of limitation ? OPP
- (3) Whether suit of the plaintiff is not maintainable in the present form ? OPD
- (4) Whether suit is bad for mis joinder of parties? OPD
- (5) Whether suit is bad for non joinder of necessary parties ? OPD
- (6) Whether this Court has no jurisdiction to try and entertain the present suit ? OPD
- (7) Whether plaintiff is stopped from filing the suit by his own act and conduct, if so, its effect ? OPD
- (8) Relief.”

Parties led their evidence in support of their respective pleas.

Trial Court vide judgement/decreed dated 30.08.2011 dismissed the suit of the appellant. Appeal filed by the appellant against the said judgement/decreed was dismissed by the First Appellate Court vide judgment/decreed dated 01.02.2013. Hence, the present appeal by the plaintiff.

I have heard learned counsel for the parties and have gone through the record available on the file carefully.

In the present case, there is no dispute qua the service period of the appellant. The appellant had worked on ad-hoc basis from 23.05.1969 to 11.11.1970. Thereafter, the services of the appellant were terminated as a regular Agriculture Sub Inspector had joined. Appellant was again appointed on temporary basis w.e.f. 01.01.1971 and later his services were regularized w.e.f. 01.01.1971 vide order dated 26.06.1973. Thus, in the present case the break in service of the appellant was on account of joining of regular incumbent and was not for any reason beyond the control of the appellant. In the facts and circumstances of the present case, the Courts below had rightly held that the break of 50 days from 12.11.1970 to 31.12.1970 could not be condoned in the absence of any rules and the fact that the break in service was on account of the fact that the regular incumbent had joined in place of the appellant.

In the facts and circumstances of the present case, the Courts below had thus rightly dismissed the suit of the

plaintiff. No substantial question of law arises in this case warranting interference by this Court.

Dismissed.

January 15, 2016
Ramandeep Singh

**(SABINA)
JUDGE**