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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.306 of 2016

Date of decision: March 02, 2016

Om Parkash

.....Appellant

Versus

Chairman, Power Utilities, Haryana
and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. V.D. Sharma, Advocate
for the appellant.

SABINA, J

Appellant had filed suit for declaration seeking a retrospective promotion from the date his juniors have been promoted.

The case of the appellant, in brief, was that he was appointed as Lower Division Clerk ('LDC' for short) on 09.09.1974 with the respondents and was directly selected as Upper Division Clerk ('UDC' for short) and joined his duty on 26.07.1979. After successfully completing the probation period, appellant cleared the departmental examination in July 1982. Appellant was eligible for promotion to the post of Assistant as he was required to pass the departmental test and was required to have three years experience as UDC. Thus, the appellant was entitled for promotion as Assistant w.e.f. 25.07.1982. On 22.01.1986, many officials were promoted as Assistant from UDC, but the case of the appellant was ignored. Junior to the petitioner were promoted as Assistants. Representation submitted by the appellant was rejected vide order dated 11.06.1986. Appellant

was promoted as Assistant on 28.04.1992 and was thereafter, promoted as Deputy Superintendent on 29.02.2008 and retired from service on 30.04.2009. Adverse remarks recorded in the Annual Confidential Report ('ACR' for short) of the appellant from 01.04.1984 to 31.03.1985 were expunged vide letter dated 29.07.2005. Hence, the suit was filed by the appellant.

Respondents in their written statement averred that the appellant had cleared the departmental test. Since the appellant had not secured 70% good report, his case for promotion was not considered.

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

- “1. Whether the order dated 4.5.2010 passed by the defendant No.2 is illegal, null and void and not binding on the rights of the plaintiff on the grounds mentioned in the plaint?OPP
2. Whether the plaintiff is entitled to retrospective promotion as Assistant w.e.f. 17.11.1983?OPP
3. Whether the plaintiff is entitled to a decree for declaration on the grounds mentioned in the plaint?OPP
4. Whether the suit is not maintainable in the present form?OPD
5. Whether the plaintiff has no locus standi and cause of action to file the present suit?OPD
6. Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD
7. Whether the suit is time barred?OPD
8. Whether the suit is band for mis-joinder and non-joinder of necessary parties?OPD
9. Relief.”

Parties led their evidence in support of their respective pleas.

The suit filed by the appellant-plaintiff was dismissed by the trial Court being time barred vide judgment/decreed dated 06.09.2013. The said judgment/decreed passed by the trial Court were upheld in an appeal filed by the appellant-plaintiff by the First Appellate Court vide judgment/decreed dated 06.10.2015. Hence, the present appeal by the appellant-plaintiff.

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

Both the Courts below after appreciating the evidence led by the parties have held that at the first instance, cause of action accrued to the appellant on 22.01.1986 when his juniors Onkar Singh and Prahlad Singh were promoted. Appellant could have also filed the suit when adverse remarks in his ACR for the year 1984-1985 were expunged and conveyed to him on 29.07.2005. However, appellant served notice on the respondents in the year 2010. Thus, in the present case, the Courts below rightly held that the suit filed by the appellant in the year 2010 was time barred as the appellant had failed to file the suit within three years of the accrual of the cause of action to him.

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

Dismissed.

**(SABINA)
JUDGE**

March 02, 2016
mahavir