

In the High Court of Punjab and Haryana at Chandigarh

R.S.A. No. 2705 of 2015
Date of Decision: December 19, 2016

Gurmail Singh Kuka

... Appellant

Versus

Haryana State Agricultural Marketing Board and others

... Respondents

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

Present: Mr. N.C. Kinra, Advocate,
for the appellant.

Mr. R.S. Longia, Advocate,
for respondent No.1.

P.B. Bajanthri, J. (Oral)

1. In the instant second appeal, the appellant has questioned the validity of the orders passed by the trial as well as appellate Court dated 15.03.2013 and 17.07.2014.

2. The appellant filed a suit before the trial Court to seek promotion on par with respondent no.3 – Fakir Chand Gupta for various posts. The trial and appellate Courts have rejected the grievance of the appellant on the sole ground that the suit was not within the time limit.

3. Learned counsel for the appellant submitted that cause of action has accrued to the appellant in the year 2008 as and when respondent no.3 was promoted to various cadres retrospectively. Therefore, the suit was filed within the time limit as it was filed on 08.01.2010 before the trial Court.

4. On the other hand, learned counsel for respondent No.1 - Board submitted that the appellant is not entitled for any benefit as he has not

agitated his right for promotion to the various cadres timely. On the contrary, respondent no.3 – Fakir Chand Gupta had filed litigation before the Court. By virtue of Court's directions, the respondent – Board have considered his name for promotion to various cadres from retrospective date in the year 2008. Therefore, the appellant is not similarly situated person so as to extend the benefit of promotion on par with respondent no.3 – Fakir Chand Gupta. Learned counsel for respondent - Board also pointed out that the decision of the Apex Court passed in *U.P. Jal Nigam and another vs. Jaswant Singh and another, (2006) 11 SCC 464*, wherein it is held that delay and laches are relevant factor for the purpose of granting benefits for promotion and one must be vigilant to his right and challenging any action after his retirement is impermissible.

5. Heard learned counsel for the parties.

6. The question for consideration in the present appeal is whether the suit filed by the appellant is within the time limit or not and further extending benefit to a junior and whether the same can be extended to a senior after long lapse of time or not?

7. Admittedly, the appellant is senior to respondent no.3 – Fakir Chand Gupta. Said respondent agitated his right to seek promotion to various cadres before the various forums. The Board, after considering the grievances of respondent no.3, promoted him to various cadres in the year 2008. Therefore, the cause of action to the appellant accrues as and when his junior was promoted to the various cadres in the year 2008 when respondent no.3 – Fakir Chand Gupta was promoted. Thus, cause of action accrues to the appellant in the year 2008 and the appellant has filed his suit on 08.01.2010, therefore, suit is filed within the time limit. Insofar as

extending the service benefits or monetary benefits on par with the junior with reference to promotion is concerned, it was the duty of the appointing authority whenever an employee's promotion is required to be considered, at the same time senior to such persons shall not be ignored until and unless they are not eligible. The respondent – Board have not produced any material to show that appellant's name was overlooked for particular reason so as to give promotion to respondent no.3 – Fakir Chand Gupta. Therefore, question of delay and sleep over the right in this case may not arise. Even assuming that from 2008 to 2010 delay is taken into consideration but still for the purpose of extending monetary benefits at the best. the appellant is not entitled for three years prior to filing of the suit i.e. from 08.01.2010.

In view of these facts and circumstances, the trial and appellate Courts have erred in rejecting the claim of the appellant on the ground of limitation. Hence, orders of the trial and appellate Court are set aside. Instant regular second appeal is allowed. The respondents are directed to extend the benefits to the appellant on par with respondent no.3 – Fakir Chand Gupta. Appellant is entitled to monetary benefits three years prior to filing of the suit i.e.08.01.2010. Necessary action shall be taken by the respondent -Board in promoting the appellant from the date of promotion of respondent no.3 – Fakir Chand Gupta and extend monetary benefits to the appellant within a period of six months from today.

December 19, 2016

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(P.B. Bajanthri)
Judge

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No