

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.90 of 1990

Date of Decision: 6.02.2017

Harish Chander

... Appellant

Versus

State of Haryana & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: None.

RAJIV NARAIN RAINA, J.(Oral)

The learned District Judge, Bhiwani has done commendably in his judgment and decree dated 13.6.1989 reversing the ill-considered judgment of the trial court dated 24.11.1988 for good and sufficient reason. The present appellant and plaintiff before the civil court challenged his non-promotion to the post of Assistant Sub Inspector of Police although persons junior to him i.e. defendants No.4 to 18 were promoted on 27.11.1981. His representation against the denial of promotion was considered and rejected by the authorities in the police department. The record revealed that the plaintiff had earned adverse remarks in his confidential reports for the years 1972-73 and 1975-76. It was material relevant to the consideration in the year 1981 for the department promotion committee. The instructions require that more weight has to be given to the last 5 years reports prior to the date of consideration for promotion and the previous record does not get wiped out. The issue, which was on trial, was whether crossing of efficiency bar would wipe out the adverse ACRs or not. The Trial Court took the view that crossing of efficiency bar would render to adverse ACRs ineffective. The learned District Judge, Bhiwani reversed the finding holding that only

because the plaintiff was allowed to cross the efficient bar after he earned adverse ACRs, the same cannot be deemed to have been wiped off and could still be taken into consideration while denying promotion to shoulder duties and responsibilities of the higher post. This statement of law is correct and supported by precedent. The learned District Judge, Bhiwani applied the available rulings of the time on the point in Jaswant Singh Brar v. State of Punjab & ors., (1975) 1 Service Law Reporter 899 and Ran Singh Kalson Deputy Superintendent of Police v. The State of Haryana and ors., (1978) 1 Service Law Reporter 450 (DB). Reliance on these judgments is appropriate. The trend in law post 1990 indicates the same settled legal position and to the rulings relied upon by the Judge I would add the dictum in State of Punjab v. Gurdas Singh, (1998) 4 SCC 92: AIR 1998 SC 1661 and State of Uttar Pradesh v. Lalsa Ram, (2001) 3 SCC 389 that past record does not get wiped out after employee is allowed to cross the efficiency bar.

Not only this, the learned District Judge, Bhiwani, correctly non-suited the plaintiff on ground that the suit was barred by time. The impugned order of promotion of juniors was passed on 27.11.1981. This is also admittedly the date pleaded in the plaint as the date when the cause of action arose. Therefore, the right to sue accrued to the plaintiff on 29.11.1981 when the cause of action arose. The suit was, therefore, barred by Section 58 of the Limitation Act as the same could have been filed within 3 years from the date when the right to sue accrued i.e. up to 27.11.1984. If the period of statutory notice in terms of Section 15(2) of the Limitation Act is taken into consideration, then the suit could have been filed on or before 27.1.1985. However, the suit was filed on 7.2.1985 beyond limitation. The District Judge thus rightly reversed the findings of the trial Court on issue No.3 regarding

limitation and on this point proceeded to dismiss the suit and set aside the judgment of the trial court. Consequently, the suit has been dismissed on merits and by bar of limitation and rightly so: See, for support in similar circumstances Secretary to Govt. of Punjab v. Ajit Singh, (1999) SCC (L&S) 1322.

As a result of the preceding, I find no reason to tinker with the well reasoned orders passed by the District Judge, Bhiwani and would dismiss this appeal as involving no substantial question of law under Section 100 of the CPC or Section 41 of the Punjab Courts Act, 1918 for consideration on the second appeal side of this Court.

Dismissed.

6.02.2017
monika

(RAJIV NARAIN RAINA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>