

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2484 of 2016 (O&M)

Date of Decision: 20.02.2017

Baldev Singh

... Appellant

Versus

The Director/Principal, Shaheed
Bahat Singh College of Engineering
and Technology and others

... Respondents

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

Present: Mr. Puneet Kumar Bansal, Advocate,
for the appellant.

RAJIV NARAIN RAINA, J.(Oral)

1. The plaintiff – appellant and the 3rd defendant were selected and appointed as Lab Attendants in a competitive open merit recruitment process conducted in 1998 and the recommendations of the Selection Committee are found in the minutes of the meeting dated March 20, 1998. Three separate lists were made of candidates falling in Open General, SC/ST and Ex-Serviceman category. The plaintiff's name figures in general category at Sr. No.2 whereas the 3rd defendant at Sr. No.3 of the reserve category of SC/ST. The final seniority list of Junior Technician (Lab)/Lab Assistant (old designation) was notified on June 13, 2006 where the name of the plaintiff was shown below the 3rd defendant. The date of joining of the plaintiff was April 20, 1998 while the 3rd defendant joined the post offered on April 23, 1998. Law is settled that date of joining is a fortuitous circumstance in the same selection and merit list provided joining time is not breached till permissible time in the offer or by special order extending the date of joining which too has a ceiling. The plaintiff can have no

advantage on this stealthy point raised before me to score victory over the seniority of the 3rd defendant.

2. The plaintiff filed a suit for declaration in the Court of the learned Addl. Civil Judge (Sr. Division), Ferozepur on March 31, 2014

3. Both the Courts below have non-suited the plaintiff-appellant on bar of limitation. The suit was time barred. Whether the cause of action is taken to have arisen in 1998 or in 2006, when the final seniority list was published and the appellant's name was placed lower than the 3rd defendant. Therefore, the right to sue expired when the suit was brought.

4. Accordingly, in first appeal the lower appellate court was wholly justified in dismissing the suit as barred by time which it plainly was. If suit is barred by law nothing survives and limitation cannot revive. Even assuming plaintiff had not filed suit and had approached the High Court by filing writ petition under Article 226, it would have failed on delay and unexplained laches. Besides, disputes relating to seniority should be raised within reasonable time and delay and laches is an important factor for the High Court to refuse entertaining the belated petition when the claim is stale and dead, then rights of third parties cannot be upset by intervention. Moreover, if the period fixed for suit has run out the High Court would dismiss the case. Thereby, the dispute in the suit no longer remains between the plaintiff and the 3rd defendant to contest but to the entire cadre which was not party to the plaint. By passage of time settled rights to seniority should not be disturbed and to use the well-worn phrase - one cannot unscramble a scrambled egg.

5. Not only does a question of law not arise in this appeal it lacks

merit to the point of non-entertainability of the suit which deserved to have been dismissed at the threshold by invoking Order 7 Rule 11 (d) of the Code of Civil Procedure, 1908 from the statement in the plaint to be barred by law of limitation.

6. The appeal is accordingly dismissed.

(RAJIV NARAIN RAINA)
JUDGE

20.02.2017
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>