

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4418 of 2015 (O&M)
Date of Decision: 24.03.2017

Balbir Singh

... Appellant

Versus

Punjab State and others

... Respondents

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

Present: Mr. Gurcharan Singh, Advocate,
for the appellant.

Mr. Anil Sharma, Addl. AG, Punjab.

RAJIV NARAIN RAINA, J.

1. On February 06, 2017 I passed the following order:-

“The Lower Appellate Court has returned a finding that the plaintiff did not work as a Platoon Commander from May 1992 to March 1993 and, therefore, was not entitled to the salary claimed by him. The suit was filed on 19.12.2008 claiming release of pay from 12.05.1992 to 31.03.1993. The suit for recovery was barred by time and deserves to have been dismissed on that short point. The Appellate Court has noticed that the suit was filed after 11 years from the date when the representation/appeal for grant of claimed salary was declined.

Accordingly, this Court is of the prima facie view that the suit was barred even applying the law in State of Punjab and others v. Gurdev Singh, AIR 1991 SC 2219 and there was, therefore, no necessity to have passed the order dated 10.05.2016 asking the State to file reply as to why promotion of the appellant was denied when junior to the appellant was promoted and even though appellant was promoted retrospectively why he would not be entitled to

monetary benefits on par with his juniors. I am afraid that question did not arise in view of the facts of the case.

Accordingly, I grant leave to the State from not pressing CM No.1402-C of 2017. The affidavit filed is redundant in Regular Second Appeal where any fresh document or pleading can be placed only by way of additional evidence or by amendment.

Since notice of motion has been issued, let notice be issued to the appellant for the date fixed to show cause why this appeal should not be dismissed on the next date of hearing.

To be shown in the urgent list.”

2. On notice served on the appellant, Mr. Gurcharan Singh, learned counsel is present in Court in support of the appeal. I have heard him on point of limitation which bars the suit. He submits that the unpaid salary is only for a few months and the appellant is now a retired pensioner from the Home Guards and in equity he should be given salary for the period worked. Of course, it is not possible for the learned counsel to change the dates and the events of the case which stare in the face that in the year 2008 the same claim made for unpaid salary for the period noticed in the interim order.

3. The trial Court had partly decreed the suit with interest @10% till realization. The trial Court reasoned that since the plaintiff was promoted to the post of Platoon Commander from the post of Quarter Master Sargent the period spanning May 12, 1992 to March 31, 1993 while the appellant was posted at Ferozepur he is required to be deemed to be promoted with effect from retrospective date and thus he would be entitled to pay in the rank of Platoon Commander and not Quarter Master Sergeant. The trial Court preened the issue of limitation coming in the way of relief which the

lower Appellate Court in the appeal preferred by the State focused and found that the suit was patently barred by limitation. The claim for money was one such that it could be filed within three years from the date of accrual of the cause of action but that period unfortunately expired. In my considered view, the lower appellate Court has rightly set aside the decree of the trial Court which was the court's foremost duty under Section 3 of the Limitation Act, 1963 for the first court to screen when the plaint was filed that the suit was barred even though limitation has not been set up as defense. The exercise of the power to dismiss the suit at the threshold was thus inherent in civil court since the suit presented was patently barred by limitation as by that time the right to sue had expired. Therefore, there is nothing intrinsically wrong in what the lower appellate Court held as reason enough to dismiss the suit as not maintainable.

4. Accordingly, the appeal is revealed on hearing parties to be devoid of merit and stands declined and the suit ordered to be dismissed with costs in all the courts below.

(RAJIV NARAIN RAINA)
JUDGE

24.03.2017

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Whether speaking/reasoned
Whether reportable

Yes
No