

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CM No.3596-C of 2017 in/&
RSA No.1492 of 2017 (O&M)
Date of decision: 17.03.2017

Chief Secretary to Govt. of Punjab and ors.

... Appellants

VS

Sudarshan Kumari & anr.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Anil Sharma, Addl. AG, Punjab.

RAJIV NARAIN RAINA, J. (ORAL)

1. Heard the State in this appeal assailing the concurrent findings against it by the Courts below decreeing the suit of the plaintiff respondent.
2. The plea of Order 2 Rule 2 CPC was taken before the Trial Court by the appellant but was not seriously pressed at the time of hearing and therefore, learned Addl. District Judge, Chandigarh in its judgment dated 11.07.2016 has correctly not paid much attention to the legal bar. The earlier suit by the same plaintiff was for redetermination of the seniority and promotion. The trial Court in para. 12 of its judgment observed that the earlier suit was decreed on 09.09.2006 and the defendants were bound to pay arrears of benefits arising from decree and if the declaration is not given the plaintiff can file a fresh suit on another cause of action. The plaintiff's position in the impugned seniority under challenge was rectified from serial No.15 to serial No.13 conferring on her right to promotion w.e.f.

04.06.1997 by virtue of the earlier decree. Then with the reconsideration request moved by the plaintiff, it was the duty of the department to give benefits as become consequentially due because of change of seniority position and retrospective promotion from the date when juniors were promoted. The first suit was seniority centric and in the second suit arrears of difference of salary was claimed as an independent cause of action before the trial Court. The Appellate Court agreed with the opinion of the trial Judge, and to my mind rightly as no exception can be taken to the view which is not against the law and the decisions in *Paluru Ramakrishnaiah and ors. vs. Union of India & anr., (1989) 2 SCR 92* and *State of Haryana vs. O.P.Gupta etc., (1996) 7 SCC 533* are not helpful to the learned State counsel because those cases dealt with complex issues of seniority resolved by the Supreme Court for the entire cadre and therefore, the principle of 'no work no pay' was applicable.

3. The present is an individual dispute due to wrongful action of the defendants in fixing inter se seniority and therefore, the cure of which was to bring right to ante dated promotion. Once the flaw in the seniority is set right and the redrawn seniority list has attained finality in the first suit, then the plaintiff was legally entitled to the arrears of difference of salary for the date when the junior was promoted, irrespective of the length of time. That is not the fault of the plaintiff but of the government department.

4. I, therefore, do not accept the argument advanced by the State counsel that plaintiff had no right to payment of past financial benefits and

reject the same. There is nothing in this appeal as no substantial question of service law arises in second appeal for consideration, either under Section 100 of Civil Procedure Code, 1908 or Section 41 of the Punjab Courts Act, 1918.

5. Moreover, there is an inordinate delay of 113 days in filing the appeal without sufficient cause shown for the reasons of delay. The explanation for late filing is in stock defence of delay caused by bureaucratic red tape and therefore, I would dismiss the appeal not only on merits but also by the bar of limitation and accordingly, the application under Section 5 of the Limitation Act is declined by applying the principles restated in **Post Master General & Ors v. Living Media India Ltd.& Anr, (2012) 3 SCC 563.**

6. Appeal stands dismissed in limine.

(RAJIV NARAIN RAINA)
JUDGE

17.03.2017
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1. Whether speaking/non-speaking?	Yes
2. Whether reportable/non-reportable?	No