IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-3710-2010 (O&M)
Date of Decision:-04.04.2018.

Director, Industry and Commerce Department, Punjab, Chandigarh and others

.....Appellants

Versus

Jaswinder Singh

......Respondent

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

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Present: Mr. RBS. Chahal, Additional A.G. Haryana.

Mr. R.S. Sihota, Senior Advocate with
Mr. B.R. Rana, Advocate for the respondent.

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P.B. BAJANTHRI, J. (Oral)

In the instant appeal, appellants have questioned the validity of the Appellate Court order dated 10.03.2010.

2.) Respondent was stated to have been appointed as Enumerator on *ad hoc* basis. Due to policy decision of the State Government, Enumerator post was treated as surplus. Consequently, appellants-State issued a circular on 14.05.1991 to accommodate such of those Enumerators and surplus staff. Pursuant to the same, process of accommodating such of those surplus employees was taken by the Excise and Taxation Department. Amongst others, respondent's name was also recommended to the competent authority. For want of certain documents, competent authority issued a communication on 20.11.1991 asking the respondent and others to furnish documents. The same was stated to have not been communicated to the respondent whereas other similarly situated persons like respondent who have submitted documents and they were appointed in the year 1991-92. The respondent did not approach the appellant-Department pursuant to the circular dated 14.05.1991 read with 20.11.1991 communication in respect of accommodating surplus staff like respondent. He slept over the matter from 1991 to 2007. He had filed a suit in the year 2007. Trial Court rejected the suit. Consequently, he preferred an appeal. Appeal was allowed on 10.03.2010. Hence, the present appeal by the Department

3.) Learned counsel for the appellants submitted that rightly Trial Court considered issue relating to limitation and rejected the suit whereas the Appellate Court considered limitation only on the score that communication of letter dated 20.11.1991 by the appellant-Department was incomplete on the respondent, therefore, there is a lapse on the part of the appellant Department. The Appellate Court considered two decisions of the Supreme Court reported in 1998 SC 2722 and 2007 (3) SCT 486 relating to delay and communication of order. The lapses on the part of the respondent in not approaching the appellant-Department or filing a suit timely within the time limit stipulated under the Limitation Act has not been apprised and considered. Therefore, Appellate Court decision is liable to be set aside.

4.) *Per contra* learned counsel for the respondent while resisting the appellants' contention submitted that Appellate Court has considered limitation issue with reference to the Supreme Court decision. If there is a lapses on the part of appellant-Department in that event limitation would not be a hurdle. The inaction on the part of the appellants is required to be taken into consideration since communication dated 20.11.1991 asking the respondent to furnish certain documents was not made available to the respondent. Therefore, there is no infirmity in the Appellate Court order. Hence, the appeal is liable to be rejected.

5.) Heard learned counsel for the parties.

6.) Trial Court framed the following issues:-

> *"1. Whether the plaintiff is entitled for declaration as prayed for? OPP*
> *2. Whether suit as filed by the plaintiff within limitation? OPP*
> *3. Whether suit as filed by the plaintiff within limitation ? OPP*
> *5. Relief."*

Undisputedly respondent had cause of action in respect of seeking his adjustment as a surplus staff into the Excise and Taxation Department as a Clerk amongst others arose in the month of November, 1991 pursuant to the circular dated 14.05.1991 read with communication dated 20.11.1991. For the purpose of selection and appointment, candidate must be alert insofar as claiming any benefit before the judicial forum. Time and again, Supreme Court has held that in respect of selection, promotion and seniority, the affected person must approach within a reasonable period. In the present case, there is a inordinate delay of about 14 years in filing suit pursuant to the cause of action accrued in the year 1991. Thus, inaction on the part of the respondent has not been apprised by the Appellate Court while dealing with the limitation issue. No doubt there may be a lack of communication between the appellants and the respondent pursuant to the communication dated 20.11.1991. At the same time, one cannot ignore the fact that respondent has slept over the matter from 1991 to

2007 that too for the purpose of seeking appointment or adjusting him as a surplus staff in the Excise and Taxation Department. Thus, Appellate Court has not taken into consideration relating to the respondent's conduct like sleeping over the matter for about 14 years. Therefore, on the ground of delay and laches, respondent is not entitled to any relief.

7.) Having regard to the above facts and circumstances, appeal stands allowed while upholding the order of the Trial Court dated 28.02.2009.

(P.B. BAJANTHRI)
JUDGE

April 04, 2018.
sandeep

Whether speaking/reasoned:- Yes / No

Whether Reportable:- Yes / No.