

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

RSA No.3560 of 2016 (O&M)

Date of Decision.07.05.2018

Vidya Sagar alias Vidhya Sagar

.....Appellant

Vs

Haryana State Agricultural Marketing Board

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. N.C. Kinra, Advocate
for the appellant.

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AMIT RAWAL J.(ORAL)

The appellant-plaintiff is aggrieved of the concurrent finding of fact whereby the suit claiming declaration seeking promotion w.e.f. 4.1.1971 instead of 22.2.1991 as Accountant & Assistant Secretary and Secretary w.e.f. 17.01.1991 and 30.06.1996 respectively on the premise that his juniors were granted promotion on the aforementioned dates, has been declined by both the courts below.

The appellant-plaintiff instituted the suit claiming aforementioned relief on the premise that he retired from service w.e.f. 30.11.2007 as EO-cum-Secretary, Market Committee, Naraingarh. He was appointed as Mandi Supervisor on 15.1.1970 and was promoted to the post of Accountant w.e.f. 22.02.1991 and Assistant Secretary w.e.f. 31.3.1999. He was promoted as EO-cum-Secretary w.e.f. 19.05.2005. In the seniority list promulgated, the plaintiff was at Sr. No.84 whereas the Kali Ram Naidu and Faquir Chand Gupta were at Sr. No.208 and 238 respectively. Both the aforementioned persons instituted the suit claiming seniority which was allowed by both Courts below and upheld upto Hon'ble Supreme Court. In these circumstances, the cause of action accrued to file the aforementioned

suit.

The employer contested the suit on various points and primarily on the ground of limitation as it was alleged that Kali Ram Naidu had filed objections against the promotions given to one Hardip Singh but the plaintiff did not avail that opportunity. However, similarly Faquir Chand Gupta and Kali Ram filed the civil suit and got the relief. In view of that fact, Kali Ram and Faquir Chand were given retrospective promotions.

The Courts below on the basis of pleadings framed as many as eight issues and dismissed the suit on the point that the suit was barred by law of limitation. The appeal preferred before the lower Appellate Court met with the same fate.

Mr. N.C. Kinra, learned counsel appearing on behalf of the appellant submitted that the cause of action arose to the plaintiff only when both Faquir Chand Gupta and Kali Ram Naidu were given retrospective promotion w.e.f. 8.5.2003 and 29.7.2008 respectively. So non-filing the objections against the seniority list could not be fatal for adjudication of the suit or stated to have evaporated or owing to the lapse of time. The Courts below have erred in not noticing the fact that it was recurring cause of action. In support of his contentions, he relied upon the unreported judgment dated 10.12.2015 rendered in RSA No.183 of 2013 titled as “Banwari Lal Vs. Haryana State Agriculture Marketing Board and others” wherein identically situated persons, who had filed the suit in 2008 though retired from service on 31.03.2000, had been granted relief aforementioned, thus, urges this Court for allowing the regular second appeal on the same premise.

I have heard learned counsel for the appellant, appraised the

paper book and is not in agreement with the submissions of Mr. Kinra, for, the judgment rendered in Banwari Lal's case (supra), the Court was not rendered assistance with the provisions of Article 58 of the Limitation Act. The same reads as under:-

58	To obtain any other declaration.	Three years	When the right to sue first accrues.
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Concededly, the appellant had retired in 2007 and instituted the suit in the year 2010 on the premise that cause of action accrued to him when Kali Ram and Faquir Chand were given retrospective promotion from the dates aforementioned. It is settled law that a person cannot be permitted to take benefit of his own wrong. The ratio decidendi culled out by Hon'ble Supreme Court in **Union of India and others Vs. Shantiranjn Sarkar (2009) 3 SCC 90** relied upon in the judgment of **Banwari Lal's case** (supra) was a case where objection of limitation on behalf of the State owing to its wrong was not accepted. But here in this case, the appellant woke up from the slumber almost 14 years as the objections qua seniority list were invited in the month of March, 1996 vide Ex.D9. Both the other persons had availed the remedy in accordance with law. It is settled law that a person, who did not avail the remedy in time *vis-a-vis* others cannot rack up the issue by alleged occurrence of cause of action on account of decision rendered in their favour and upheld by the higher Court. In **Ghulam Rasool Lone vs. State of J&K and another (2009) 15 SCC 321** it was held that such type of promotions claimed by watching proceedings of other case wherein the benefits sought had been granted owing to the judgment and decree rendered in their favour, would not enlarge the period to espouse the interest as sought to be done in such case.

Both the courts below, in my view, have rightly not entertained the claim and the dismissed the suit on the aforementioned fact and law. I do not intend to differ with the same.

I also cannot remain unmindful of the fact that the appeal is accompanied by an application seeking condonation of delay of 437 days in filing the appeal on the ground that the against the judgment and decree of the lower Appellate Court, a review application was pending, which had been decided after 485 days, though the appeal was on time. No zimni orders have been placed on record to establish whether the delay was on account of the Court or opposite party or on behalf of the appellant. Once this Court is being prevented from such facts, the limitation cannot be condoned on the drop of the hat.

Resultantly, the appeal is dismissed both on merits and limitation.

(AMIT RAWAL)
JUDGE

May 07, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No