

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

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**RSA-4916-2016 (O&M) and
XOBS No. 3-C of 2017
Date of decision:02.02.2018**

Haryana State Agricultural Marketing Board

...Appellant

Versus

Nasib Singh Kasana

.... Respondent

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

Present: Mr. Padamkant Dwivedi, Advocate for the appellant.

Mr.N.C.Kinra, Advocate for the respondent.

P.B. BAJANTHRI, J. (ORAL)

In the instant appeal, appellant has questioned the order of appellate court order dated 28.07.2016. Respondent's grievance in the suit is that he is entitled to pre-ponment of promotion to the post of Accountant w.e.f. 04.01.1971 instead of 27.11.1997. His claim is based on the retrospective promotion accorded to one Sh. Kali Ram Naidu on 08.05.2003 and Sh. Faquir Chand Gupta on 29.07.2008 by which they were promoted to the post of Accountant w.e.f. 04.01.1971. Learned counsel for the appellant submitted that trial court rightly rejected the suit on the

ground of delay. However, the appellate court allowed the respondent's appeal stating that there is no delay and extended benefit of promotion to the respondent to the post of Accountant from 04.01.1971 instead of 27.11.1997. It was submitted that respondent had cause of action as and when Sh. Kali Ram Naidu was promoted on 08.05.2003 whereas suit has been filed on 28.07.2011 i.e. much after promotion of Sh. Faquir Chand Gupta who has been promoted on 29.07.2008 on par with Sh. Kali Ram Naidu. Thus, appellate court has failed to appreciate dates and events insofar as considering the delay on the part of the respondent.

2. Per contra, learned counsel for the respondent submitted that appellate court has appreciated the dates and events. Respondent had cause of action as and when Sh. Faquir Chand Gupta was promoted on 29.07.2008. Thereafter, filing of suit on 28.07.2011 is within time limit since between 08.05.2003 to 29.07.2008 matter was pending consideration. Therefore, the contention of the petitioner that there is delay in filing the suit is incorrect. There is no infirmity in the appellate court's order.

3. Heard learned counsel for the parties.

4. Substantial question of law involved in the present appeal is whether suit filed by the respondent is within the limitation period or not? Respondent had cause of action for the purpose of seeking retrospective promotion to the post of Accountant on 04.01.1971 instead of 27.11.1997 accrued as on the date of one Sh. Kali Ram Naidu was promoted on 08.05.2003 by virtue of judicial pronouncement. Following the promotion order of Sh. Kali Ram Naidu one Sh. Faquir Chand was also promoted on

29.07.2008 it was also by virtue of judicial pronouncement. Respondent's contention that he had cause of action both on Sh. Kali Ram Naidu promotion as well as Sh. Faquir Chand Gupta promotion. If Sh. Faquir Chand Gupta's promotion is taken into consideration suit is within the time limit of 3 years. As suit was filed on 28.07.2011. Perusal of the date and events it is evident that respondent was awaiting for decision in the case of Sh. Kali Ram Naidu and Sh. Faquir Chand Gupta who got benefit of retrospective promotion to the post of Accountant by virtue of judicial pronouncement. Therefore, respondent is a fence-sitter that he was waiting for judicial pronouncement. Even assuming that judicial pronouncement is dated 08.05.2003 and 29.07.2008 even then there is delay in filing suit since cause of action accrued to the respondent on 08.05.2003. Appellate court has erred in not appreciating the issue relating to limitation. Accordingly, appellate court order dated 28.07.2016 is set aside. Appeal stands allowed.

02.02.2018

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No