

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

**RSA No. 1041 of 2017
DECIDED ON: JULY 02, 2018**

AVTAR SINGH HOTH

.....APPELLANT

VERSUS

**MANAGING DIRECTOR, PUNCO FED.
AND ORS.**

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Vipin Mahajan, Advocate,
for the appellant.

JASPAL SINGH, J.

Through instant Regular Second Appeal, appellant-plaintiff has challenged the judgment and decree dated 26.09.2016 passed by Additional District Judge, Gurdaspur whereby an appeal preferred under Section 96 of the Code of Civil Procedure (for short, "CPC") against the judgment and decree dated 17.08.2010 passed by Civil Judge (Jr. Division), Gurdaspur has been dismissed and judgment and decree dated 17.08.2010 has been upheld, vide which, the suit of the appellant-plaintiff to the effect that plaintiff is entitled to get pension w.e.f. 31.01.1995 under the Punjab Civil Services Rules and the Punjab Financial Rules and Suit for mandatory injunction directing defendant No.1 to fix the pay of plaintiff as per old pay scale mentioned in Rule 1.9 (b) of Common Cadre Service Rules, 1989, and further to release the remaining gratuity amount for the period from 22.03.1961 to 07.08.1972 (11 years 4

months 17 days) and release all the other service benefits after the taxation of pay, was dismissed.

2. Concededly, appellant-plaintiff earlier preferred a Civil Suit No. 81/1996 on 12.04.1996 seeking mandatory injunction, directing the respondents to release the gratuity, leave encashment with interest but the said suit was decreed for payment of gratuity and leave encashment in his favour and the amount accrued on account of gratuity and leave encashment was paid to him. Subsequent thereto, he preferred another Civil Suit No.260 of 1999 against Punjab State Co-op and Development Federation (Punco Fed) for declaration that he is entitled to pensionary benefit with interest as well as for mandatory injunction to pay all arrears of pension and other admissible benefits making averments that in earlier Suit No. 81 of 1986, he could not make a prayer for the entire period of his service and had only alleged a claim with regard to the period of service rendered by him in District Gurdaspur. The aforesaid Civil Suit bearing No. 260 of 1999 was dismissed particularly being barred under Order 2 Rule 2 CPC as well as that he failed to produce the evidence. Subsequent thereto the dismissal of aforesaid suit, he preferred Civil Suit No.290 of 2005, which also stood dismissed on 17.08.2010 and an appeal preferred against the said judgment dated 17.08.2010 was also met the same fate vide impugned judgment and decree dated 26.09.2016. Against the dismissal of the suit as well as appeal referred to above, he has approached this Court by way of instant Regular Second Appeal.

3. Though learned counsel for the appellant during the course of arguments has fairly conceded the applicability of Order 2 Rule 2 CPC as well

as non-maintainability of suit(s) being filed by appellant-plaintiff time and again yet, he submits that appellant is entitled to the benefits claimed by him through the instant lis and further that the suit has been dismissed wrongly and in an illegal manner. Though, appellant may be entitled to the relief claimed yet, legally suit is not maintainable being barred under Order 2 Rule 2 CPC. At the time he earlier filed suit bearing No. 81/1996, which was decreed in his favour, he could have easily claimed the relief with regard to gratuity in respect of entire period of service rendered by him but a fresh suit bearing No.260/1999 was filed by him, which stood dismissed and in stead of filing an appeal against the judgment and decree dated 26.06.2002, he preferred third suit bearing Civil Suit No.290/2005 which was also dismissed. The trial court as well as lower appellate court has rightly concluded that the suit preferred by the appellant-plaintiff is barred under Order 2 Rule 2 CPC as well as doctrine of resjudicata. The appellant-plaintiff cannot be allowed to re-agitate the suit time and again. Thus, this Court does not find any illegality and infirmity in the impugned judgments rendered by both the courts below. Rather, this Court is of the considered view that the aforesaid impugned judgments do not call for any interference by this Court.

4. In the light of what has been discussed above, the instant appeal is dismissed.

JULY 02, 2018
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(JASPAL SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes/No</i>