

**IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
131**

RSA-1320-2018

Date of decision: 10.12.2018

BHOLA SINGH

...APPELLANT

VS.

***THE DIRECTOR GENERAL BORDER ROAD DIRECTORATE NEW
DELHI AND ANOTHER***

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Suresh Kumar Kaushik, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

The present appeal has been preferred challenging the judgment and decree passed by the Civil Judge (Junior Division) Gurgaon dated 30.08.2016, whereby the suit for declaration and mandatory injunction preferred by the appellant-plaintiff was dismissed on the ground of limitation as also on the ground of cause of action having not arisen within the jurisdiction of the Court.

Counsel for the appellant-plaintiff contends that no specific issue with regard to the limitation has been framed by the Courts below and no opportunity has been granted to the appellant-plaintiff with regard to the said aspect. Assertion has also been made that apart from the claim of seeking promotion to the post of Assistant Chargeman from the year 1966, the appellant is also claiming the benefit of ACP and medical reimbursement.

I have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the impugned judgments as also the documents, which have been placed on record, but do not find myself in agreement with the contentions of the counsel for the appellant.

The Lower Appellate Court has primarily dealt with the matter with the aspect of principle of *res judicata* as also the delay. The issue with regard to the delay has been taken specifically but the fact remains that it is apparent from the records that the cause of action arose to the appellant in the year 1966 and all the benefits, which have been sought to be claimed, are as a consequence which would not enhance the period of limitation.

It is an admitted position that earlier the appellant has preferred a civil suit, which was dismissed for the same cause of action, appeal against which preferred by the appellant was also dismissed by the Lower Appellate Court and the said order, when challenged in this Court, was resulted in withdrawal of the appeal as well as the suit with liberty to the appellant to pursue his remedy in accordance with law. It is after the withdrawal of the said civil suit on 24.03.2014 that the present suit was filed. The order dated 24.03.2014, as passed by this Court, reads as follows:-

“ In view of the above statement made by the learned counsel for the appellant, the present appeal as well as the suit are permitted to be withdrawn with liberty to the appellant to pursue his remedy in accordance with law.”

In view of the above facts, it cannot be said that the permission was granted to the appellant to pursue the remedy by filing a fresh suit for

the same cause of action. The judgments and decree, under challenge, cannot be said to be not in accordance with law which would call for any interference by this Court.

The appeal being devoid of merits stands dismissed.

December 10, 2018

(AUGUSTINE GEORGE MASIH)

pj

JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No