

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

RSA No.5817 of 2017(O&M)

Date of Decision:-30.08.2018

Shyam Sunder.

.....Appellant.

Versus

State of Haryana & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Ashwani Bhardwaj, Advocate for the appellant.

JASWANT SINGH, J.(ORAL)

CM No.15380-C of 2017

This is an application for condonation of 165 days delay in re-filing the present second appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit of counsel for the appellant, delay of 165 days in re-filing the present second appeal is condoned.

RSA No.5817 of 2017

Plaintiff Sham Sunder is in second appeal aggrieved against the judgment and decree dated 23.12.2016 passed by Additional District Judge, Sirsa, whereby the appeal filed by respondent-State of Haryana has been allowed and consequently, the judgment and decree passed by Civil Judge(Jr. Divn.), Sirsa dated 21.09.2013 has been reversed by dismissing plaintiff-appellant's suit for declaration.

Through his suit which was filed on 10.09.2011, plaintiff had sought grant of higher pre-revised pay scale of Rs.1200-2040 w.e.f. 01.05.1990, on the basis of instructions dated 23.08.1990 and 26.07.1991 of the Finance Department. As per the said instructions, the employees of the department having qualification of Matric with ITI Diploma were placed in the pay scale of 1200-2040, the employees having qualification of Matric with ITI Diploma were treated to be posted against technical post to which pay scale of Rs.1200-2040 has been attached, which is equal to Rs.4000-6000 in pay scale revised from 1.1.1996. Appellant pleaded that although he is not matric but possesses an ITI Diploma and therefore the department has wrongly placed him in the pay scale of Rs.750-950 instead of Rs.1200-2040. This grievance stands addressed, as the State of Haryana has issued instructions on 09.08.2010 whereby employees like appellant have been granted pay scale of 1200-2040 w.e.f. 01.05.1990. Thus the suit was filed.

Learned Counsel for the appellant, on the basis of the afore-stated facts has argued that the post of plaintiff i.e. Fitter-helper is a technical post and he cannot be deprived of the revised scale of Rs.1200-2040 on the ground that he is non-matric. It is argued that in view of the instructions dated 09.08.2010 passed by Financial Commissioner and Principal Secretary to Government of Haryana, appellant is entitled for pay scale of Rs.1200-2040. It is further argued that the said instructions were in fact issued in pursuance to orders passed by this High Court in various writ petitions, whereby it took a decision that the employees like plaintiff be placed in the pay scale of Rs.1200-2040 w.e.f. 01.05.1990. However, the lower Appellate Court has wrongly relied upon The Haryana (Abolition of Distinction of Pay Scale between Technical and Non-Technical Posts) Act,

2014, which came into operation during the pendency of the appeal, to dismiss the suit of the plaintiff, as the same cannot be made applicable retrospectively to effect the financial rights of employees like appellant. Consequently, prayer has been made for allowing the present Regular Second Appeal.

After hearing learned Counsel for the appellant and perusing the paper book, this Court is of the opinion that present second appeal is without any merit and therefore, liable to be dismissed.

Admittedly, the plaintiff has raised a claim on the basis of instructions issued by Financial Commissioner dated 09.08.2010 so as to claim a pay scale of Rs.1200-2040 by filing the present suit on 10.09.2011. Prior to this, plaintiff never raised any grievance regarding the pay scale being granted to him. Consequently, the case of appellant is based upon the Executive Instructions, which granted employees like plaintiff, relief w.e.f. 1990. However, now the State of Haryana has enacted The Haryana (Abolition of Distinction of Pay Scale between Technical and Non-Technical Posts) Act, 2014 with retrospective effect i.e. from 01.02.1981, whereby the Executive instructions dated 23.08.1990, 26.07.1991 and 09.08.2010 stand withdrawn from the dates, these were issued and distinction between Technical & Non-Technical Posts has been eliminated.

Consequently, the suit, which otherwise would have been barred by limitation, in case instructions dated 09.08.2010 would not have been issued by the State Government, has now become redundant, as the said instructions stand withdrawn and further in view of the fact that validity of the Act of 2014 has not been challenged in the present suit.

Thus, the lower Appellate Court has rightly dismissed the suit

of the plaintiff-appellant, whose findings are hereby affirmed by this Court as well, being well reasoned.

In view of the above, finding no question of law much less substantial question of law arising for determination in the present second appeal, the same is hereby dismissed.

(JASWANT SINGH)

JUDGE

August 30, 2018

Vinay

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