

**C.M. NOS.10854-10855 C OF 2019 &
R.S.A. NO.3999 OF 2019**

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

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**C.M. NOS.10854-10855 C OF 2019 &
R.S.A. NO.3999 OF 2019**

DATE OF DECISION: AUGUST 27, 2019

Haryana State Agricultural Marketing Board and others

.....Appellants

VERSUS

S.K.Nangru

....Respondent

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Padam Kant Dwivedi, Advocate,
for the appellant.

AUGUSTINE GEORGE MASI, J. (ORAL)

C.M. No.10854-C of 2019

Prayer in this application is for condonation of delay of 4 days
in filing the appeal.

For the reasons mentioned in the application, which are duly
supported by an affidavit of Secretary, Haryana State Agricultural
Marketing Board, Panchkula, the application is allowed and delay of 4 days
in filing the appeal stands condoned.

C.M. No.10855-C of 2019 & R.S.A. No.3999 of 2019

Challenge in this appeal is to the judgment and decree passed
by the Civil Judge (Junior Division), Kurukshetra, dated 28.08.2015,
whereby the suit for declaration with consequential relief of mandatory
injunction for holding that the order dated 23.04.2001 vide which absence

period from 20.08.1987 to 26.08.1991 of the respondent-plaintiff was ordered to be treated as leave without pay, has been decreed and the benefit of the said period has been granted to the respondent-plaintiff, appeal against which preferred by the appellant-Haryana State Agriculture Marketing Board stands dismissed by the Additional District Judge, Kurukshetra, on 25.03.2019.

It is the contention of learned counsel for the appellant that there is an inordinate delay on the part of the respondent in challenging the order dated 23.04.2001 as the civil suit has been filed on 30.11.2011. He contends that the respondent-plaintiff continued to serve the appellant-Board and superannuated on 30.11.2008 as a Superintending Engineer and all through his service he has never challenged the said order and rather accepted the same. He contends that the suit, which has been preferred by the respondent-plaintiff, could not have been entertained by the Courts below as it is much beyond the period laid down under the statute. His further contention is that the order, which has been impugned, has been passed by the competent authority in exercise of its powers as provided under Rule 7.3 of the Punjab Civil Services Rules as applicable to the State of Haryana. He, thus, contends that the judgments and decree passed by the courts below cannot sustain and deserve to be set-aside.

Having considered the submissions made by learned counsel for the appellants and on going through the impugned judgments and decree, this Court does not find any substance in the submissions put forth by him.

Firstly, no issue with regard to delay and the maintainability of the suit has been framed by the Courts below. Although a passing reference

has been made during the submissions before the trial Court by counsel for the appellants that the suit is time barred but the said plea has neither been pressed before the trial Court nor has there been any finding in this regard. Even before the lower Appellate Court, not a word has been argued by counsel for the appellants and, therefore, the said plea cannot be allowed to be raised before this Court. Otherwise also, this plea is not acceptable in the light of the fact that the Courts below have not granted him the benefit of salary for the period in question and have only granted the continuity of service for the relevant period i.e. 20.08.1987 to 26.08.1991 for the purpose of grant of pensionary benefits. It is not in dispute that the competent authority could have passed an order under Rule 17.3 of the Punjab Civil Services Rules as applicable to State of Haryana relatable to the period for which a person has remained out of service. The judgments, on which reliance has been placed by the Courts below, especially with regard to the exoneration of an employee in the departmental enquiry and for reinstatement i.e. Surinder Singh Vs. State of Punjab and others, 2007 (3) SCT 288 (P&H), Mewa Singh (retd.) (Driver) Vs. Chairman, P.R.T.C. and others, 2007 (4) SCT 602 (P&H) and Tota Singh Vs. Punjab State Electricity Board and others, 2007 (3) SCT 793 (P&H) are fully applicable to the case in hand.

In the light of the above and keeping in view the provisions of the statute, no illegality has been found in the judgments and decree passed by the Courts below, which have been challenged by the appellants in the present appeal. There are concurrent findings recorded by the Courts below and there is no question of law, which arises in the present case for consideration.

Finding no merit in the appeal, the same stands dismissed.

Since the main appeal stands dismissed, no orders are required to be passed on C.M. No.10855 C of 2019.

August 27, 2019
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No