

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

110/A

Regular Second Appeal No.538 of 2019 (O&M)

Date of Decision: October 31st, 2019

Jai Parkash Sharma

...Appellant

Versus

The Haryana State Agricultural Marketing Board, Panchkula

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Inder Pal Goyat, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J.

CM No.1265-C of 2019

Prayer in this application is for condonation of delay of 58 days
in refiling the appeal.

For the reasons mentioned in the application, which is duly
supported by an affidavit of the applicant-appellant, the same is allowed.

Delay of 58 days in refiling the appeal stands condoned.

RSA No.538 of 2019

Challenge in this appeal is to the judgment and decree
dated 18.05.2018 passed by the Additional District Judge, Panchkula,
whereby an appeal preferred by the defendant-respondent-The Haryana
State Agricultural Marketing Board was allowed, wherein challenge was to
the judgment and decree dated 11.02.2015 passed by the
Additional Civil Judge (Senior Division), Panchkula, whereby the suit
preferred by the appellant-plaintiff for declaration to the effect that the
appellant-plaintiff is entitled to preponement of the date of his promotion to
the post of Accountant from 01.12.1997 to 04.01.1971 and for promotion
from the stages at par with the promotion of immediate juniors

consequential benefits, which was decreed with interest at the rate of 8% per annum to be calculated from the date of accrual to the recovery of the amount of arrears.

2. It is the contention of learned counsel for the appellant that the Lower Appellate Court has rejected the claim of the appellant-plaintiff on the grounds of delay in approaching the competent authority as well as the Court. It is asserted that the cause of action accrued to the appellant-plaintiff after the expiry of the period of response which was expected from the defendant-respondent on a legal notice dated 21.01.2010 which was served but without any response. He contends that the learned Lower Appellate Court has failed to appreciate that there was no delay on the part of the appellant-plaintiff. In case the appellant-plaintiff had any grievance, he could have approached the respondent only when such a right had accrued on him. He contends that it is only after the finalisation of the claim of his co-employee, he could have put forth his claim for the same benefit. He, therefore, asserts that the judgment and decree as passed by the Lower Appellate Court cannot sustain and deserves to be set aside.

3. I have considered the submissions made by learned counsel for the appellant and with his assistance, have gone through the records of the case.

4. The facts which are not in dispute are that as per the seniority list of Mandi Supervisor-cum-Fee Collector as it stood on 01.12.1998 (Exhibit P-32), appellant-plaintiff was shown senior to Kali Ram Naidu and Faquir Chand Gupta. Kali Ram Naidu agitated the issue of seniority before the departmental authorities, who rejected his claim. He filed a civil suit which was decreed on 01.08.2001 (Exhibit P-5). The said judgment,

after being challenged by the authorities, attained finality up to the Supreme Court as the challenge to the said judgment and decree was rejected up to the Supreme Court. In compliance with the said judgment and decree dated 01.08.2001, Kali Ram Naidu was promoted with retrospective effect to the post of Accountant vide order dated 08.05.2003 (Exhibit P-4). On promotion of Kali Ram Naidu, who was junior to the appellant-plaintiff, cause of action arose to him but he chose neither to seek the same relief nor approached the authorities for promotion.

5. Faquir Chand Gupta, however, immediately approached the authorities and when no response was received, filed a civil suit in the year 2003 itself, which was decreed on 13.05.2005. That judgment and decree, after attaining finality, led to promotion of Faquir Chand Gupta on 29.07.2008 (Exhibit P-8). It has come in evidence that representation was submitted by one Shri Hardip Singh in the year 1992 referring his earlier representations, which he had submitted in the year 1982, 1983, 1989 and 1991 claiming therein fixation of seniority and for promotion as Accountant with effect from 04.01.1971. This representation was rejected by the Chief Administrator on 26.12.1992 (Exhibit D-2). This order was challenged by Hardip Singh by filing a departmental appeal, which was allowed vide order dated 18.09.1995 and in pursuance thereto, Hardip Singh was promoted with retrospective effect. Respondent-defendant by circulating letter dated 25.03.1996 (Exhibit D-7) sought representations/objections. Several employees including Kali Ram Naidu, Sajjan Singh and Banwari Lal submitted objections. On considering the objections, gradation list of Accountant was confirmed on 18.12.1996 (Exhibit P-12).

6. Appellant-plaintiff, admittedly, did not submit any representation against fixation of his seniority at any point of time or claimed promotion at par with Kali Ram Naidu after passing of the order dated 08.05.2003 (Exhibit P-4) promoting Kali Ram Naidu as Accountant. Appellant-plaintiff for the first time served a legal notice upon the respondent-defendant on 21.01.2010 i.e. after a period of about seven years from the date of promotion of Kali Ram Naidu and after about four years of the retirement of the appellant-plaintiff from service. It may be pointed out that the appellant-plaintiff superannuated in the year 2006. It cannot, therefore, by any stretch of imagination be said that the appellant-plaintiff had filed civil suit within time as the suit was instituted on 03.09.2010.

7. By now, it is well settled that merely because of submission of representation/legal notice, the limitation to institute a suit would not extend and the cause of action cannot be said to have accrued on the passing of an order of rejection of such a belated claim or on expiry of period of notice as given in the legal notice. Reference in this regard has been made by the Lower Appellate Court to the judgment of the Hon'ble Supreme Court in *State of Tripura and others Versus Arabinda Chakraborty and others 2014 STPL (Web) 292 SC*. Reliance has also been placed upon the judgment passed by this Court in *RSA No.2814 of 2015* titled as *Vinod Kumar Sharma Versus Haryana State Agricultural Board and others* decided on 19.12.2016 as also in *RSA No.4916 of 2016* titled as *Haryana State Agricultural Marketing Board Versus Nasib Singh Kasana* decided on 02.02.2018, which on facts have also been found to be applicable to the case in hand, especially in the case of *Nasib Singh Kasana (supra)*, where he had also sought promotion from the date of promotion of Kali Ram Naidu and

Faquir Chand Gupta.

8. The judgments, on which reliance has been placed by the learned Lower Appellate Court, would fully apply to the case of the appellant-plaintiff and, therefore, it cannot be said that the judgment and decree dated 18.05.2018 passed by learned Additional District Judge, Panchkula, is illegal or in violation of the principles of law as applicable to the case in hand.

9. The impugned judgment and decree passed by the Lower Appellate Court being based upon proper appreciation of the pleadings and the evidence on record as well as the applicable precedents, which have been referred to in the said judgment, do not call for any interference by this Court.

10. No question of law is involved in the present case which would require adjudication.

11. In view of the above, finding no merit in the present appeal, the same stands dismissed.

October 31st, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No