

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

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**LPA No. 333 of 2021 (O&M)
Decided on : 16.11.2021**

Mithan Lal Gupta

... Appellant

Versus

State of Haryana and others

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Mr. A.K. Viridi, Advocate for the appellant (s).

Mr. Hitesh Pandit, Advocate for the respondents-Nigam.

G.S. Sandhawalia, J. (Oral)

CM-886-LPA-2021

Application for exemption from filing certified copy of impugned order and typed copied of writ petition alongwith its annexures, is allowed.

CM stands disposed of.

CM-1176-LPA-2021

Application for placing on record Annexures A-1A to A-5, is allowed. Annexures A-1A to A-5 are taken on record. Office to append the same at the relevant place.

CM stands disposed of.

Main case

The present letters patent apkpeal is directed against the order of the learned Single Judge dated 27.01.2020 passed in CWP No.37537 of 2019, whereby the writ petition was dismissed on the ground that it was

suffering from delay and laches and that on an earlier occasion CWP No.20139 of 2019 filed by the appellant with an identical prayer, had also been dismissed as withdrawn with liberty to avail the remedy in accordance with law.

Counsel for the appellant has vehemently submitted that a fresh cause of action had arisen to him which was not appreciated by the learned Single Judge and, therefore, the order be set aside and the appellant's case should be decided on merits.

In the considered opinion of this Court, the argument is without any basis. It is not disputed that the appellant retired on 31.08.2004 as a Head Clerk. He had initially preferred CWP No.21603 of 2016 challenging the order dated 09.06.2016, whereby his claim for promotion with effect from the date his junior Maha Singh had been rejected. The relief was granted to the extent that he was to be granted notional benefits of fixation of pay and pension and the arrears were restricted to 38 months prior to the filing of the writ petition. Being dissatisfied with the said order, the appellant had preferred an intra Court appeal bearing LPA No.929 of 2019, which was dismissed as withdrawn simpliciter on 16.05.2019.

Apparently, one O.P. Gandhi, who was junior to the appellant had preferred a civil suit on 16.04.2008 claiming promotion against one Ram Nath Singh to the post of Circle Superintendent w.e.f 10.02.2003 which benefit had been granted during the service tenure of the appellant. The said suit had been decreed on 23.04.2013

(Annexure P-6) and eventually the benefits were granted to Shri O.P. Gandhi on 02.02.2018 (Annexure P-1) w.e.f. 10.02.2003 with all consequential benefits, subject to final outcome of the RSA etc.

It is not disputed that the appellant was in service, when Ram Nath Singh was promoted on 10.02.2003 and admittedly he is also junior to the appellant, on the basis of which the appellant had a cause of action during his service, which he chose not to exercise. The second round of litigation was, thus, initiated by filing CWP No.20139 of 2019, 16 years later, which writ was allowed to be withdrawn on 24.07.2019 (Annexure A-2) by giving liberty to avail the remedy in accordance with law. The said order reads as under:-

“After arguing for some time, counsel for the petitioner states that he may be allowed to withdraw the present writ petition with liberty to the petitioner to avail his remedy in accordance with law.

Dismissed as withdrawn, with the liberty, as prayed for.”

The said order was never challenged by filing letters patent appeal but on the same cause of action another writ petition i.e. CWP-35737-2019 was filed, which has now been dismissed on 27.01.2020 with the same liberty, specifically observing, if at all still available with the appellants. Thus, we do not see how the second writ petition was maintainable on the same cause of action, once the initial order had not been challenged in appeal. Secondly, even on merits the learned Single Judge has rightly observed that the appellant's case suffered from delay and laches.

Thirdly, any cause of action available to the appellant prior

to institution of CWP-21603-2016 but not urged in the said writ petition, was also barred by the principle enshrined in Order 2 Rule 2, Code of Civil Procedure, 1908, as applicable *mutatis mutandis* to writ proceedings vide Rule 32, Writ Jurisdiction (Punjab & Haryana) Rules, 1976. Said Rule reads as under:

“32. In all matters for which no provision is made by these rules, the provisions of the Code of Civil Procedure 1908, shall apply *mutatis mutandis*, in so far as they are not inconsistent with these rules.”

It is the settled principle that the appellant now cannot seek promotion as he has not agitated for his claim at the earliest when the cause of action arose in the year 2003 when his junior Ram Nath Singh was promoted. Even the other employee who was also his junior as such had been diligent enough to file the civil suit at the earliest i.e. in 2008, but the appellant chose to wait till the benefits as such were granted to the decree holder. Even otherwise he was in service when Ram Nath Singh had been granted promotion on 10.02.2003, we do not see any reason why the appellant should be permitted to raise a stale claim at this stage.

Accordingly, there is no merit in the present appeal and the same is dismissed.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

November 16, 2021
Naveen

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No