

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

1. RSA No.244 of 2011

Gian Chand Handa

... Appellant

Versus

Punjabi University Patiala & another

... Respondents

2. RSA No.807 of 2011

Gian Chand Handa

... Appellant

Versus

Punjabi University Patiala & another

... Respondents

Date of decision: 17th December, 2021

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Vishal Goel, Advocate for the appellant.

Mr. Vikrant Sharma, Advocate for the respondents.

FATEH DEEP SINGH, J.

The appellant in both these appeals detailed above at the relevant time joined as Clerk with the respondent Punjabi University Patiala on 02.08.1971 and was promoted as Senior Assistant on 15.07.1987. Subsequently he retired from service on 31.08.2003.

In the first appeal (RSA No.244 of 2011) he filed a suit for declaration that he had been working as Senior Assistant in the respondent University and vide order dated 18.07.1995 was chargesheeted to which he replied and after inquiry was served with show-cause notice and vide impugned orders dated 05.11.1997 he was

punished with stoppage of two annual increments with cumulative effect and which was upheld by the authorities in various recourses adopted by him under the law. Thus, in the first appeal he has filed a suit for declaration challenging this order dated 05.11.1997 to be illegal, ultra-vires and arbitrary to the constitution, claiming entitlement to these increments.

In the second appeal (RSA No.807 of 2011), the plaintiff appellant in his suit had sought that he had completed 16 years of service on 14.07.2003 and was therefore entitled to proficiency step-up by way of time bound promotional scale which was never allowed by the Audit department and therefore challenged denial of this proficiency step-up.

Since both these appeals are between the same parties where similar questions are involved and being inter-connected, needs to be disposed off together for the sake of brevity.

The common stand of the defendant University (now respondent) though was of admission as far as promotion of the appellant to the post of Senior Assistant on 15.07.1987 was concerned, but denied that he had completed 16 years of service on 14.07.2003 and had reiterated that vide order dated 05.11.1997 two increments with cumulative effect were stopped and therefore, he could not claim any such relief. In the other suit, the defendant University (now respondent) had claimed that on account of acts of omission and commission which is a misconduct, the appellant was issued show-cause notice and after

adopting due process of law of holding enquiry and offering him reasonable opportunity to explain, the impugned orders were passed and therefore, was not entitled to any relief as the relief is barred by the law of limitation.

In the first appeal, the trial Court framed the following issues:-

1. Whether the plaintiff is entitled for declaration as prayed for? OPP
2. Whether the suit of the plaintiff is within limitation? OPP
3. Relief.

In the second appeal, the following issues were framed:-

1. Whether the plaintiff is entitled for declaration as prayed for? OPP
2. Whether the suit as filed by the plaintiff is not maintainable? OPD
3. Whether the suit as filed is time barred? OPD
4. Relief.

In the first appeal, the appellant/plaintiff himself appeared in the witness box as PW1 and reiterated his stand. In cross-examination, the defendants got proved copy of order dated 28.02.1998 as Ex.D1, copy of letter dated 15.04.1998 as Ex.D2, copy of another letter issued to the

appellant by the Enquiry Officer Ex.D3, copy of statement of Mewa Singh dated 14.02.1997 as Ex.D4 and the inquiry file Ex.D5 and thereafter closed the evidence. The Court of learned Addl. Civil Judge (Sr. Divn.), Patiala vide judgment and decree dated 28.01.2005 dismissed the suit of the plaintiff with costs and which order was upheld by the learned Additional District Judge, Patiala vide judgment and decree dated 09.02.2007 whereby appeal of the present appellant stood dismissed.

In the second appeal, the plaintiff/appellant stepped into the witness box as PW1 by way of affidavit Ex.PW1/A and reiterated his stand proving documents Ex.P1 to Ex.P8. On the other hand to rebut his case, defendants tendered into evidence certain documents Ex.D1 to Ex.D6 and closed the evidence. The Court of learned Civil Judge (Senior Division), Patiala vide judgment and decree dated 06.06.2009 decreed the suit of the plaintiff with costs however, the Court of learned Additional District Judge (Fast Track Court), Patiala through impugned findings dated 17.07.2010 allowed the appeal of the University and dismissed the suit of the appellant.

It is in this context, these two matters have come up before this Court.

In view of the recent pronouncement in **‘Kirodi (since deceased) through his LR vs. Ram Parkash & others’ Civil appeal No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019**, the Hon’ble Supreme Court has clearly held under Section 41 of the Punjab

Courts Act, 1918 which has its application to the States of Punjab and Haryana, that there is no necessity of framing substantial question of law for disposal of an appeal.

Heard Mr. Vishal Goel, Advocate for the appellant; Mr. Vikrant Sharma, Advocate representing the respondents and perused the records of the case.

It is under the Limitation Act 1963 by way of Schedule 58 which prescribes that to obtain relief of any other declaration the prescribed period of limitation is three years when the right to sue first accrues. In the first appeal, the appellate Court below relying upon the own testimony of the plaintiff as PW1 held that the impugned order dated 05.11.1997 was conveyed to the plaintiff against which he filed an appeal which was rejected on 28.02.1998 by the Syndicate and which was conveyed to the plaintiff on 15.04.1998 and the present suit has been filed admittedly by the plaintiff on 10.05.2001, after a period of more than three years and there is nothing illustrative how and by what means he is trying to seek condonation of such delay. Thus, in the light of law laid down in '**Punjab State vs. Darshan Kumar**' 1995 (Sup4) SCC 220 the suit being hopelessly barred by limitation, does not lie.

Learned counsel for the appellant could not convince how the suit was entertainable or there was recurring cause of action qua the challenge to the punishment order that has been passed against the appellant regarding stoppage of two increments with cumulative effect.

Thus, this Court does not feel that there is any illegality or perversity in the impugned judgment.

In the second appeal, the learned lower appellate Court in the impugned findings while upsetting the findings of the learned trial Court, had given a well reasoned finding by placing reliance on Punjabi University Calendar Vol.I which prescribes the age of retirement of A-category officials of the University to be 60 years. No doubt, the arguments put forth by the learned counsel for the appellant that promotional scale/proficiency step-up is to be granted to the same category of employees as appellant after completion of 16 years of service but the same is subject to a rider that an employee must have good service record. Since it is there, the own stand of the appellant that there have been serious allegations of omission and commission which tantamount to grave misconduct leading to stoppage of two increments with cumulative effect, to the mind of this Court it has been rightly held by the learned first appellate Court that the plaintiff appellant does not fulfills the conditions entitling him to the grant of proficiency step-up, regarding which the order dated 05.11.2007 Ex.D1 and copy of instructions dated 02.03.2001 Ex.D2 have been proved on the record, which debars such an employee who has been administratively dealt with to seek proficiency step-up regarding which letter dated 21.11.2003 Ex.D3 of the Registrar of the University has been proved on the record. The order of stoppage of two annual increments has since then attained

finality as the relief being sought by the appellant did not meet with any success and it has been rightly held so that though the employee had completed 16 years of service on 14.05.2003 but on account of withholding of his two annual increments with cumulative effect debars him from seeking such a relief and is purely in-consonance with the instructions of the State Government in respect of employees who have been awarded punishment. The Punjab Government instructions Ex.D2 have been proved on the record and which have been adopted by the Syndicate of the respondent University vide resolution dated 24.01.1989 Ex.D6 as has been brought to the notice of this Court by the respondent side. Therefore, there is nothing suggestive in the submissions of the learned counsel that there was any illegality or perversity in the findings of the Court below and which has rightly allowed the appeal of the University and dismissed the suit.

In view of the foregoing discussions detailed above, this Court does not find any merit in both the present appeals which stand dismissed however with no order as to costs.

(FATEH DEEP SINGH)
JUDGE

December 17, 2021

rps

Whether speaking/reasoned Yes/No

Whether reportable Yes/No