

2023:PHHC:103390

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

RSA-5063-2019 (O&M)
Date of decision: 09.08.2023

Hukam Chand

..Appellant

Versus

Chairman-cum-Managing Director and another

.Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Dipesh Jain and
Mr. Ashutosh Kaushik, Advocate for the appellant

ANIL KSHETARPAL, J (Oral)

CM-14377-C-2019

After hearing learned counsel representing the applicant-appellant, the delay of 381 days in re-filing the appeal is condoned.

Application stands allowed.

CM-14376-C-2019

After hearing learned counsel representing the applicant-appellant, the delay of 128 days in filing the appeal is condoned.

Application stands allowed.

Main case

The correctness of the concurrent findings of fact is assailed by the plaintiff in this Regular Second Appeal. He filed a suit for grant of decree of declaration that the order sanctioning the earned leave instead of medical leave from 04.08.2005 to 10.08.2006, without his consent, is illegal and he is entitled to leave encashment for the aforesaid period. While contesting the suit, the defendants stated that the plaintiff

was transferred to Operation Division, Patran. However, he failed to join his duties. On account of his willful absence from the official duties and disciplinary proceedings were initiated. The disciplinary authority ultimately passed an order of penalty. The plaintiff filed an appeal before the Appellate Authority in which the order of punishment was modified. The plaintiff was permitted to apply for the earned leave. In compliance thereto, the appellant made changes under his signatures in the original application, which was sanctioned. Hence, the suit is liable to be dismissed.

Both the courts, on appreciation of evidence, have found that the changes in the application for grant of medical leave were made by the appellant himself and there is no evidence of any duress or coercion. Moreover, the appellant made changes pursuant to the directions of the order of the appellate authority. Furthermore, the suit was filed on 18.12.2013, which was hopelessly time barred.

Heard the learned counsel representing the appellant at length and with his able assistance perused the paperbook. He contends that the courts have erred in dismissing the suit as time barred because the appellant was having recurring cause of action. In this case, the appellate authority passed specific order on 06.09.2007. In substance, the appellant assailed its correctness. The suit was filed in December, 2013. As per Article 58 of the Schedule attached to the Limitation Act, 1963 the suit for grant of any other declaration can be filed within a period of 3 years from the date, when the right to sue first accrues. In

the present case, the right to sue first accrues on the date when the appellate order was passed.

Hence, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

09.08.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE