

RSA-455-2020 (O&M)

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

RSA-455-2023 (O&M)

Date of Decision: 29.05.2023

The Transport Commissioner, Haryana and others**...Appellants****Versus****Babu Ram (now deceased) through his LRs****...Respondents****CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Neeraj Sheoran, D.A.G., Haryana.

Ms. Sushma Sharma, Advocate for
Mr. R.K. Agnihotri, Advocate for the respondents.

HARSIMRAN SINGH SETHI, J. (Oral)

1. The present appeal has been filed by the appellant-State challenging the judgments and decrees of the Courts below by which the claim of the respondent-plaintiff for regularization of his service from the year 1988, had been allowed

2. Learned counsel for the State argues that the allowing of the benefit of ante dated regularization with effect from the year 1988, as claimed in a civil suit filed in the year 2013, is contrary to the judgment of this Court in LPA-1662-2015 titled as '*Sukhbir Singh and others Vs. State of Haryana and others*', decided on 31.08.2016, according to which judgment of the Division Bench, the claim being raised for ante dated regularization on completion of 240 days of service on the basis of 1979 Instructions at a belated stage, cannot be sustained, hence, the judgment and decree of the Courts below is contrary to the settled principle of law settled by the Division Bench in *Sukhbir Singh's* case (supra).

3. Learned counsel for the respondents has not been able to dispute the said proposition of law as well as the fact that the suit was filed by the respondent-plaintiff in the year 2013 claiming regularization from the year 1988 on the basis of the Instructions issued in the year 1979.

4. I have heard learned counsel for the parties and have gone through the record with their able assistance.

5. A large number of cases were filed seeking ante dated regularization upon completion of 240 days of service as per the Government Policy dated 19.02.1979. Certain employees were given benefit under the said policy, which grant of benefit was also upheld by Hon'ble Supreme Court of India.

6. In the year 2015, a similar writ petition claiming the same benefit was dismissed by Coordinate Bench of this Court on the ground of delay that no benefit of ante dated regularization can be sought at a belated stage. The order passed by the Single Judge was upheld by the Division Bench in *Sukhbir Singh's* case (supra). The Division Bench after noticing all the facts held that once the government policy of regularization on completion of 240 days came into operation in the year 1979 and the employees kept quiet for a number of years, the said claim cannot be agitated at a belated stage and is liable to be dismissed on the ground of inordinate delay, especially when the services of the employee concerned has already been regularized. The relevant paragraphs of the judgment is as under:-

“5. We have heard learned counsel for the parties and gone through the record. There is no denial to the fact that after regularization of their services w.e.f. 01.04.1993, the appellants woke up first time in the year 2012 and raised claim for

retrospective regularization. The said claim was based upon a decision of this Court dated 19.12.2011 rendered in the case of Jaimal Singh and others Vs. State of Haryana and another (CWP No.6135 of 1998) where this Court directed the State Government to identify the Depot-wise requirement of post of Ticket Verifiers and sanction the requisite posts so that their services could be regularized. The State Government undertook such exercise and the writ-petitioners in that case were made regular w.e.f. 01.04.1987.

6. It is in the light of these facts that the appellants also wanted the dates of regularization of their services to be antedated.

7. The fact that the appellants took no steps to claim the benefit of Government policy of 1979 for over 12 years is not in dispute. They cannot take the benefit of Jaimal Singh's case (*supra*) as the writ petitioners in that case had approached this Court in the year 1998 while the appellants remained fence-sitters. Even as per Jaimal Singh's case, there was no cutoff date for the purpose of regularization of services. Much was to depend upon as to how many posts were sanctioned in a depot. All the writ petitioners of that case were not made regular w.e.f. 01.04.1987.

8. Assuming that the appellants are similarly placed yet they lost their right as neither such claim was put up before the competent authority nor they approached any other forum within a reasonable period. In this view of the matter, the rejection of their claim by learned Single Judge on the ground of delay and laches calls for no interference by this Court.”

7. Applying the ratio of the judgment in **Sukhbir Singh's** (*supra*) case in hand, it is clear that the respondent was appointed in the year 1986 but his services were terminated in January, 1987 and thereafter was once again appointed on temporary basis in May, 1987 and his services were regularized in January, 1988. A claim was raised by respondent-plaintiff by filing a civil suit in the year 2013 seeking regularization of his services on the post of Conductor from the year 1986 instead of 1988. The respondents kept quiet and did not raise any

objection with regards to regularization of his services in the year 1988 till the year 2013 i.e. for a period of 25 years, when the civil suit was filed, hence, the judgment of the Division Bench in **Sukhbir Singh's** case is fully applicable in the facts and circumstances of the present case.

8. In the present case, there is a positive order of regularization of the services of the respondent-plaintiff in the year 1988. In case, he was aggrieved in any manner, the cause of action accrued in the year 1988 and the same cannot be treated as a subsisting cause of action, once the positive order was passed giving a particular benefit from a specific date. As per the settled principle of law, settled by the Hon'ble Supreme Court in Civil Appeal No.1852 of 1989 titled as ***State of Punjab and others Vs. Gurdev Singh and Ashok Kumar***, even, a void order is to be challenged within a period of three years. Hence, the relevant paragraphs of the judgment is as under:-

“First of all, to say that the suit is not governed by the law of Limitation runs afoul of our [Limitation Act](#). The statute of limitation was intended to provide a time limit for all suits conceivable. [Section 3](#) of the Limitation Act provides that a suit, appeal or application instituted after the prescribed "period of limitation" must subject to the provisions of [Sections 4 to 24](#) be dismissed although limitation has not been set up as a defence, Section-2(J) defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suit, appeal or application. [Section 2\(J\)](#) also defines, "prescribed period" to mean the period of limitation computed in accordance with the provisions of the Act. The Court's function on the presentation of plaint is simply to examine whether, on the assumed facts the plaintiff is within time. The Court has to find out when the "right to sue" accrued to the plaintiff. If a suit is not covered by any of the specific articles prescribing a period of limitation, it must fail within the residuary article. The purpose of the residuary article is to provide for cases which could not be covered by any other provision in the [Limitation Act](#). The residuary article is applicable to every variety of suits not otherwise provided

for. [Article 113](#) (corresponding to [Article 120](#) of the Act 1908) is a residuary article for cases not covered by any other provisions in the Act. It prescribes a period of three years when the right to sue accrues. Under [Article 120](#) it was six years which has been reduced to three years under [Article 113](#). According to the third column in [Article 113](#), time commences to run when the right to sue accrues. The words "right to sue" ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the 'cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted (See: (i) *Mt. Bole v. Mt. Koklam and Ors.*, AIR 1930 PC 270 and (ii) [Gannon Dunkerley and Co. v. The Union of India](#), AIR 1970 SC 1433).

It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for.”

9. Keeping in view the above, the judgment and decrees of the Courts below are perverse to the settled principle of law noticed hereinbefore and cannot be sustained in the eyes of law.

10. At this stage, the learned counsel for the respondent-plaintiff submits that in case, the respondent-plaintiff is not entitled for ante dated regularization but he be given a chance to file a representation to seek step up of his pay equivalent to his junior, in case, any of his junior is getting more salary than him.

11. Learned State counsel submits that in case any such claim is raised by filing any representation, the said claim will be decided within a period of eight weeks on the receipt of any such claim from the respondent-plaintiff by passing appropriate order.

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12. Keeping in view the above, the judgments and decrees of the Courts below are set aside being perverse to the settled principle of law. The appeal is allowed and the suit filed by the respondent-plaintiff is dismissed but with the liberty to file appropriate representation.
13. Pending application, CM-1740-C-2023, also stands disposed of.

29.05.2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No