

2023:PHHC:153333
**101 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-1389-1992 (O&M)
Date of decision: 01.12.2023

State of Punjab

....Appellant

Versus

Jarnail Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Gurpreet Singh, Addl. AG, Punjab

Mr. P.S.Guliani, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1. In this Regular Second Appeal, the State of Punjab (defendants in the trial court) assailed the correctness of the concurrent findings of fact arrived at by the courts below. Although, the First Appellate Court has slightly modified the relief granted to the plaintiff.
2. In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed.
3. The plaintiff (respondent herein) filed a suit for grant of decree of declaration to the effect that he is entitled to the benefit of the period of service from the date of his appointment on account of annual increment and other service benefits and is also entitled to leave of the kind due for the period of strike during the month of February, 1968. It is the case of the plaintiff that he was appointed

on 30th October, 1967 and continued to work for a period of nearly 1 year and eight days, when on account of strike announced by the workers his services were discontinued by the reasons of his absence vide order dated 5th March, 1968. Subsequently, the respondent was appointed afresh on temporary basis as a Conductor for a period of three months vide order dated 9th March, 1970, whereas the respondent joined on 10th March, 1970.

4. The respondent filed the suit on 19th April, 1988. Learned trial court decreed the suit on the ground that in 1967 the respondent was appointed as a Conductor in the place of one Sh. Ram Lubhaya, Conductor, who was placed under suspension. Subsequently, Sh. Ram Lubhaya was removed from service and therefore, the plaintiff was allowed to continue. The court concluded that the plaintiff became regular employee of the Punjab Roadways against the post available by removal of Sh. Ram Lubhaya from service. Thereafter, the court relied upon circular issued on 21st October, 1969 by the Director, State Transport to hold that the employees who were on strike and having less than 240 days of service and had been removed from service for participation in the strike should be reinstated. Thus, the court held that the respondent is entitled to condonation of break in service from 5th March, 1968 to 9th March, 1968.

5. The State of Punjab filed the first appeal. The First Appellate Court has held that there is no prescribed period of limitation for filing such suit and the plaintiff has a recurring cause of action. The court held that the respondent is not entitled to claim grant of increment for the period during which he remained out of job due to his participation in the strike for the period prior to January, 1985. With the aforesaid modification, the First Appellate Court also upheld the judgment of the trial court.

6. Heard the learned counsel representing the parties at length and with their able assistance perused the paper book alongwith the requisitioned record.

7. Learned counsel representing the appellant contends that on 9th March, 1970, the respondent was given a fresh appointment for a period of three months. He submits that the plaintiff pursuant to the aforesaid appointment letter joined and continued to serve the Department. Hence, the suit filed by him on 19th April, 1988 has been filed beyond the period of limitation. He further submits that in the year 1967 as well as on 10th March, 1970 the plaintiff was appointed on a temporary basis. Hence, he could not claim continuity of service from 30th October, 1967.

8. On the other hand, the learned counsel representing the respondent submitted that this Court should not interfere after a passage of nearly 31 years.

9. It may be noted here that on 12th April, 1994 the interim order passed on 31st January 1994 was directed to continue further. This Court has been informed that the judgment and decree passed by the courts below has not been implemented.

10. First of all, the suit filed by the plaintiff on 19th April, 1988 to challenge the correctness of terms of appointment letter dated 10th March, 1970 is clearly beyond the prescribed period of limitation. If the plaintiff decided to challenge the terms of the appointment letter dated 10th March, 1970, the period of limitation will begin to run from 9th March, 1970 itself. Hence, the suit filed after a period of 18 years is beyond the prescribed period of limitation.

11. Moreover, the First Appellate Court has erred in overlooking the fact that the services of the respondent were dispensed with on 5th March, 1968 and he was appointed afresh on 10th March, 1970. Thus, there was a gap of more than two years. The instructions Ex P-3 dated 21st October, 1969 does not help the respondent, particularly when he joined the services pursuant to the appointment letter issued on 9th March, 1978. At the cost of repetition, it may be noted here that on 30th October, 1967, the appellant was appointed on a temporary basis and within a period of one year of his joining he opted to go on a strike. His services were dispensed with on account of participation in the strike.

12. Still further, the judgment passed by the First Appellate Court suffers from multiple factual errors. The courts have also erred in assuming that the respondent was appointed on a regular basis, although, the appointment letter dated 30th October, 1967 as well as 10th March, 1970 prove that the respondent was appointed on a temporary basis.

13. Keeping in view the aforesaid facts and discussion, the judgment and decree passed by the courts below are set aside. The Regular Second Appeal stands allowed.

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

01.12.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE