

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

104

RSA-1564-1992

Date of decision: 16.11.2023

STATE OF HARYANA

..Appellant

Versus

NARINDER PAL JOSHI

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Vibha Tewari, AAG, Haryana.

None for respondent.

ANIL KSHETARPAL, J(Oral)

1. Called thrice.
2. The learned counsel representing the respondent has not appeared.
3. The State of Haryana assails the correctness of the judgment and decree passed by the First Appellate Court, that reversed the judgment and decree passed by the trial Court.
4. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.
5. On 06.11.1987, the plaintiff filed a suit for grant of decree of declaration that he is entitled to be placed in the pay scale of 220-8-300/10-400 with effect from 01.04.1969. In essence, the plaintiff claims that the State of Haryana has wrongly provided for the different pay scales on the basis of qualification. The respondent was appointed as a Hostel Superintendent in the year 1965. After the reorganization of the State of Punjab, the services of the respondent were allocated to the State of

Haryana. In the year 1969, the competent authority issued a notification providing for the pay scale of 220-8-300/10-400 for the trained graduates, whereas, the Hostel Superintendents were kept in the pay scale 150-10-200/10-300.

6. The respondent made representations to the competent authority, which were rejected on 06.01.1971, 03.10.1971 and 16.11.1981. The trial Court on the appreciation of evidence, dismissed the suit on merits as well as on the ground that it was filed beyond the prescribed period of limitation. However, the First Appellate Court has reversed the judgment of the trial Court on the ground that on the basis of qualification, there cannot be difference in the pay scale of employees of one cadre. The respondent has been held entitled to the arrears from 04.11.1984 i.e. three years before the date of filing of the suit.

7. The learned counsel representing the appellant while relying upon the judgment of the Supreme Court in **Union of India and others Vs. Rajib Khan and others, 2023 AIR (SC) 448**, submits that it is permissible to provide different pay scales based upon the qualification of the employees and the Court shall not interfere on the basis of the doctrine of 'Equal Pay for Equal Work'. She submits that the scales of pay may vary based on the academic qualification or experience, and it justifies classification. She further submits that the First Appellate Court also erred while observing that the suit filed by the plaintiff was within the limitation period because the orders dismissing his representations, passed in the year 1971 and 1981 were void ab initio. She submits that even void order is required to be challenged within a period of limitation prescribed under the Limitation Act, 1963.

8. This Court has considered the submissions of the learned counsel representing the parties.

9. On a careful reading of the recent judgment passed in **Rajib Khan's case (supra)**, it is evident that the Court after examining various judgments passed in **Punjab State Cooperative Milk Producers Federation Limited and another Vs. Balbir Kumar Walia and others, (2021) 8 SCC 784; Director of Elementary Education, Odisha and others Vs. Pramod Kumar Sahoo, (2019) 10 SCC 674 and Secretary Department of Personnel Public Grievances & Pension and another Vs. T.V.L.N. Mallikarjuna Rao, (2015) 3 SCC 653**, held that the scales of pay can be different based on academic qualification and experience. In the aforesaid circumstances, the conclusion drawn by the First Appellate Court is erroneous.

10. Moreover, in **State of Punjab and Others v. Gurdev Singh (1991)4 SCC 1**, the Supreme Court examined the issue of limitation in the context of the order of dismissal passed against the employee. The relevant discussion is in para 6 of the aforesaid judgment, which is extracted as under:-

“6. 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)."

11. Keeping in view the aforesaid facts and discussion, the impugned judgment is liable to be set aside on merits as well as on the issue of limitation. Consequently, the judgment of the trial Court is restored.

12. With these observations, the present appeal is disposed of.

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

November 16th, 2023

Ay

**(ANIL KSHETARPAL)
JUDGE**

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