

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(273)

CM-7332-C-2022 in/and
RSA-2144-2022
Date of Decision : 24.01.2023

Kirpal Singh Chhina deceased through his Lrs.

...Appellants

Versus

Haryana State Agricultural Marketing Board

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. N.C. Kinra, Advocate for the appellants.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM-7332-C-2022

Present application has been filed seeking condonation of delay of 41 days in filing the appeal.

Keeping in view the averments made in the application, which is duly supported by an affidavit, the same is allowed and delay of 41 days in filing the appeal is condoned.

RSA-2144-2022

In the present regular second appeal, the challenge is to the order of the lower appellate court dated 27.01.2022 by which, the judgment and decree of the trial court dated 03.05.2017 has been set-aside and the suit filed by the appellant-plaintiff (since deceased) has been dismissed.

Certain facts need to be enumerated for the correct appreciation of the controversy. Appellant-plaintiff (since deceased) Kirpal Singh

Chhina was appointed as a Fee Collector in the year 1962. Thereafter, he was designated as a Mandi Supervisor on 30.06.1963. On 07.08.1979, he was promoted as Accountant and ultimately, retired on 31.08.1997 while working on the said post. In the year 2014 i.e. after about 17 years of the retirement, the appellant-plaintiff Kirpal Singh Chhina (since deceased) filed a civil suit claiming promotion with retrospective effect i.e. 04.01.1971 from the date when the persons junior to him, namely, Kali Ram Naidu as well as Prem Chand Sharma were extended the said benefit. The said suit was filed by the appellant-plaintiff on the ground that the persons junior to him have been given promotion w.e.f. 04.01.1971 i.e. a date prior to when the appellant-plaintiff was promoted hence, the appellant-plaintiff be also given the promotion with effect from the date the persons junior to him were promoted. The suit filed by the appellant-plaintiff was decreed by the trial court vide judgment and decree dated 03.05.2017 and a direction was given to grant the appellant-plaintiff promotion as Accountant w.e.f. 04.01.1971 and to fix the pay and the pensionary benefits with arrears within a period of three months. The said judgment of the trial court dated 03.05.2017 was appealed by the respondent-defendant-Agricultural Marketing Board as well as by the appellant-plaintiff, which came to be decided vide a common order dated 27.01.2022.

The appellant-plaintiff also filed cross objection against the trial court order dated 30.05.2017 claiming the interest on the arrears for which, he was entitled for by the trial court. The lower appellate court allowed the appeal filed by the respondent-defendant-Marketing Board and dismissed the suit filed by the appellant-plaintiff being barred by limitation and the same could not have been entertained by the trial court and

consequent cross objections filed by the appellant-plaintiff seeking interest was disposed of having been rendered infructuous as the main judgment of the trial court dated 03.05.2017 was set-aside. In the present regular second appeal, the challenge is to the order dated 27.01.2022 passed by the lower appellate court by which, the judgment and decree of the trial court dated 03.05.2017 has been set-aside and the suit filed by the appellant-plaintiff has been dismissed on the ground of delay and laches.

It is a conceded position that the appellant-plaintiff had retired in the year 1997 and the suit was filed in the year 2014 i.e. after 17 years of retirement, claiming promotion with retrospective effect i.e. from the year 1971. Nothing has been shown as to how, the said claim will be admissible to the appellant-plaintiff being time barred. The limitation for claiming a benefit had stood expired long ago.

Learned counsel for the appellant-plaintiff has not been able to show as to how, the findings recorded by the lower appellate court are perverse to the facts or evidence, which had come on record. In the absence of any perversity qua the facts or the evidence, no relief can be given to the appellant-plaintiff in the present appeal.

Keeping in view the above, as no finding, which is perverse to the facts or the evidence, no interference is called for by this Court in the present regular second appeal.

Dismissed.

January 24, 2023
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No