

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

LPA-177-2017

Date of Decision: 08.02.2023

Karnail Singh

. . . . Appellant

Vs.

State of Punjab and another

. . . . Respondents

**CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
 HON'BLE MRS JUSTICE SUKHVINDER KAUR**

Present: - Mr. Onkar Singh, Advocate,
 for the appellant.

 Mr. Karanjit Singh, Addl. A.G., Punjab.

M.S. RAMACHANDRA RAO, J.

 This Letters Patent Appeal is preferred by the appellant
challenging the order dt. 12.01.2017 passed by learned Single Judge in CWP
No.325 of 3017.

 The said Writ Petition was filed by the appellant for quashing of
an order dt. 01.10.1997 and an order dt. 07.02.2008, and seeking a Writ of
Mandamus to the respondent for counting his service period from 29.10.1971
to 16.06.1978, the period of ad hoc service from 18.07.1979 to 21.08.1980,
and also the period from 10.02.1994 to 29.07.1998 towards his total length of
service in the respondent-department for the purpose of pension, and also for
revising pay scale accordingly with consequential pensionary benefits with

18% interest rate. The appellant had even approached the Civil Judge, Chandigarh for this purpose but he withdrew the civil suit on 22.11.2016 with liberty to avail equally efficacious alternate remedy like the Writ Petition.

However, the learned Single Judge declined to entertain the Writ Petition partly on the ground of delay and laches with regard to treatment of the period from 26.01.1993 to 04.06.1993 to be treated as leave of the kind due, from 05.06.1993 to 09.02.1994 as leave with half pay, the period from 10.02.1994 to 13.12.1996 as leave without pay, and period from 01.01.1997 to 29.07.1998 without pay. As regards plea of computation of period of ad hoc service as Pharmacist from 18.07.1979 to 28.08.1980 is concerned, the learned Single Judge directed the appellant to avail alternative remedy of civil suit before the Court of Civil Judge, Chandigarh, though it was brought to his notice that the civil suit already filed by the appellant had been withdrawn.

We are of the opinion that the learned Single Judge, having noticed that the appellant had already approached to Civil Court initially and had withdrawn the same by seeking liberty to file a Writ Petition, ought not to have rejected the Writ Petition and again relegated him to avail the remedy of civil suit. It is also not as if the delay or laches pleaded by the respondent had caused any prejudice to the respondents as regards challenge to the validity of the order dt.26.05.1994 regarding the period from 26.01.1993 to 29.07.1998 wherein the request of the appellant to treat the said period as extraordinary leave had been declined. However, we are not expressing any final opinion on the aspect.

In view of the fact that the appellant had already withdrawn the civil suit filed in the Court of Civil Judge, Chandigarh when he filed the Writ

Petition, it would not be appropriate to relegate the appellant again to the Civil Court as has been done by the learned Single Judge. Whether the appellant is entitled to claim the benefit of Section 14 of Limitation Act, for the period the civil suit was pending, is also a matter which requires consideration by the learned Single Judge.

Therefore, the impugned order is set aside and the matter is remanded back to the learned Single Judge for considering the Writ Petition afresh uninfluenced by the observations made in the impugned order passed on 12.01.2017 in the Writ Petition or in this Order passed by us.

Accordingly, this Letters Patent Appeal stands allowed.

(M.S. RAMACHANDRA RAO)
JUDGE

08.02.2023
Mohit Goyal

(SUKHVINDER KAUR)
JUDGE

<i>1. Whether speaking/reasoned?</i>	<i>Yes</i>
<i>2. Whether reportable?</i>	<i>Yes</i>