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

RSA-3664-2013 (O&M)

Date of Decision: 26.05.2023

Dharampal Singh

...Appellant

Versus

Dakshin Haryana Bijli Vitran Nigam and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Parveen Kumar, Advocate for
Mr. Abhimanyu Singh, Advocate
for the appellant.

Mr. Abhilaksh Grover, Advocate
for the respondents.

HARSIMRAN SINGH SETHI, J. (Oral)

The present Regular Second Appeal, has been filed challenging the judgment and decree of the lower Appellate Court dated 18.03.2013 by which, the appeal filed by the respondent-defendant was accepted and the suit filed by the appellant-plaintiff was dismissed.

In order to appreciate the issue in correct perspective, certain facts needs to be mentioned.

The appellant was appointed as Upper Division Clerk in the Erstwhile Haryana State Electricity Board. He joined on the said post on 28.12.1974. In the appointment order, one of the condition of the appointment was that the appellant will clear the departmental account examination within 5 chances after his appointment and in case, he is not

able to clear the same, he will not be granted increment up to the date of clearing of the said examination and any increment withheld due to the non-passing of the said examination will not be restored upon clearing of the said departmental examination later.

It is a matter of fact that the appellant continued working as a Clerk but could not clear the examination up to the year 2002. Upon clearing of the said examination, the increment was given to the appellant-plaintiff but within a period of two years of clearing the examination, the appellant-plaintiff retired from service.

After retirement, the appellant-plaintiff raised a claim that certain person who were junior to him were promoted and they were getting higher salary than him though, he was senior to them in the seniority list hence, he is entitled for the benefit of promotion w.e.f. the date juniors were promoted.

As the said benefit was not extended to the appellant-plaintiff, he filed a civil suit claiming the said benefit which suit was partly allowed by the trial Court by judgment and decree dated 24.03.2012. Though, the benefit of increment which was sought, which increments were withheld due to non-passing of examination was declined but a direction was given to respondent-defendant consider the claim of the appellant-plaintiff for promotion with all consequential benefit.

Feeling aggrieved against the judgment and decree of the trial Court, the Dakshin Haryana Bijli Vitran Nigam filed an appeal which appeal came to be decided by the lower Appellate Court vide judgment and decree dated 18.03.2013, by which the lower Appellate Court held that in the present case, the benefit of increment has already

been declined by the trial Court and with regard to the relief given of promotion, the same was barred by limitation as the appellant had already retired in the year 2004 and the suit was filed by him in the year 2008.

The appeal filed was allowed and the suit filed by the respondent-plaintiff was dismissed. Hence the present Regular Second Appeal.

Learned counsel for the appellant argues that in the present case, the claim of promotion will subsists being a continuing wrong hence, the finding recorded by the lower Appellate Court that the suit filed by the appellant-plaintiff was barred by limitation is without appreciating the issue in correct perspective.

Whereas, learned counsel for the respondent argues that in the present case, even the master and servant relationship between appellant and the department had come to an end in the year 2004 and the suit was filed in the year 2008, which clearly shows that the same was barred by limitation as there was no master and servant relationship between the parties for a preceding three years of filing the suit and even otherwise, the claim of promotion, does not subsist after the retirement of employee.

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

In the present case, it is a conceded fact that while in service, no grievance was ever raised for promotion by the appellant-plaintiff. Even after a period of three years of retirement, no such grievance was raised. The suit was filed after a period of more than 04 years of retirement. Once, there was no master and servant relationship between

the parties after the retirement, no suit could have been maintainable after a period of three years of retirement and that too for claiming a promotion with retrospective effect.

Further, the claim of promotion after a period of three years from the date of cause of action arose can be considered to be subsisting or not is debatable if an employee is in service but the same cannot be claimed as a subsisting & continuing wrong for all times to come even if a person has retired service and when there is no master and servant relationship between the parties for a period of three years prior to the filing of the civil suit. Hence, the view taken by the lower Appellate Court in the impugned judgment and decree, calls for no interference at the hands of this Court in the present Regular Second Appeal.

Dismissed.

Pending application, CM-9891-C-2013, also stands disposed of.

26.05.2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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