

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(111) CM-1179-C-2023 in/and
RSA-591-2016
Date of Decision : February 20, 2023

State of Punjab and another .. Appellants

Versus

Gurdev Singh .. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gurvinder Singh, Assistant Advocate General, Punjab,
for the appellants.

Mr. A.K. Kalsy, Advocate, for the applicant-respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-1179-C-2023

Present application has been filed for fixing the main appeal for arguments.

Keeping in view the facts mentioned in the application, the same is allowed and on joint request of learned counsel for the parties, the present Regular Second Appeal is taken up for hearing today.

RSA-591-2016

In the present appeal, the challenge is the judgment and decree of the trial Court dated 10.02.2015 by which, the suit filed by the respondent-plaintiff that he should be granted due seniority and promotion with effect from the date persons junior to him were promoted with all

consequential benefits, was decreed as well as to the judgment of the lower Appellate Court dated 27.05.2015 by which the appeal filed by the State was dismissed.

Certain facts need to be mentioned so as to appreciate the controversy in the correct prospective.

The respondent-plaintiff was appointed as a Clerk in the year 1957. He attained the age of superannuation and retired on 30.04.1998 while working as a Junior Assistant. The retiral benefits were given to him and he started drawing the pension. After approximately 9 years of his retirement, a particular seniority list was issued by the Department on 17.12.2009. The said seniority list was challenged by the respondent-plaintiff in the year 2010 and claimed promotion in the year 2010 by filing a civil suit with retrospective effect. In the civil suit, though seniority list dated 17.12.2009 was challenged but no one, over and above whom the respondent-plaintiff was claiming seniority, was impleaded as a party.

Upon notice of motion, the appellant-State filed a reply that the respondent-plaintiff has already retired from service on 30.04.1998 and there is no master and servant relationship between the respondent-plaintiff and the State, hence, there cannot be a challenge to the seniority after 9 years of the retirement of the respondent-plaintiff and the suit is time barred as he cannot claim any promotion after 9 years of the retirement especially when, no one, over and above whom the respondent-plaintiff is seeking seniority, are impleaded as party to the suit. The trial Court allowed the said suit vide judgment and decree dated 10.02.2015 by holding that question of seniority and promotion as well as consequential benefit is a recurring cause, hence, the filing of the civil suit claimed benefit of promotion after

12 years of the retirement, was within the limitation period and the direction was given to re-frame the seniority of the respondent-plaintiff and to grant him promotion from the date juniors were promoted.

Feeling aggrieved against the decision of the trial Court, State of Punjab filed an appeal, which appeal came to be dismissed by holding that though the respondent-plaintiff has retired in the year 1998 and the claim of promotion and seniority is a recurring cause and the suit was within the limitation.

Aggrieved against the judgment and decree of the trial Court dated 10.02.2015 as well as to the lower Appellate Court dated 27.05.2015 respectively, the present Regular Second Appeal has been filed.

Learned counsel for the appellants argues that once the respondent-plaintiff did not raise any grievance with regard to seniority qua any other working employee and did not claim any promotion during his service career, filing of the civil suit in order to challenge the seniority and claiming promotion after 12 years of the retirement w.e.f. the date the alleged junior was promoted is much beyond the limitation and the Courts below have totally ignored the fact that the service benefits such as seniority as well as the promotion can be claimed while in service only and cannot be treated as recurring cause. Learned counsel for the appellants submits that the challenge to the seniority list has been accepted by the Courts below without taking into consideration the fact that the candidates over and above whom the respondent-plaintiff was seeking placement, were not impleaded as party.

Learned counsel for the respondent-plaintiff submits that in case the respondent-plaintiff would have been given promotion, he would

have drawn higher salary and hence, consequently, he would have drawn higher pension, therefore, non-grant of service benefits with promotion will amount to recurring cause so as to bring the suit filed by the respondent-plaintiff in the year 2010 and the Courts below have rightly concluded the suit in the favour of the respondent-plaintiff that he had a right to claim the benefit of promotion even after 12 years of his retirement on the ground that it was a recurring cause. Learned counsel for the respondent-plaintiff further submits that once the seniority list was issued in the year 2009, he had a right to challenge the same in the year 2010, which is perfectly valid and the said act was well within the period of limitation.

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

The question whether the service benefits can be claimed after retirement or not is no longer res integra keeping in view the judgment of the Coordinate Bench of this Court in ***CWP No. 28508 of 2013 titled as Suraj Mal vs. State of Haryana and others, decided on 29.09.2014.*** This Court held that even the writ petition will not be maintainable for claiming revision of pay scale, benefit of ACP scale/revised pension and retiral benefits after 9 years of the retirement. The relevant paragraphs of the said judgment are as under:-

“ 2. Considering the fact that the writ petition has been filed nearly 9 years after retirement claiming certain benefits, the issue regarding which could be raised when the petitioner was in service, the petition at this stage deserves to be dismissed on account of delay and laches only.

9. In view of the above authoritative enunciation of law by Hon'ble the Supreme Court and this Court, the present writ

petition filed by the petitioner nearly after 9 years of his retirement to claim certain benefits, which may be due to him while in service, certainly deserves to be dismissed on account of delay and laches as there is no satisfactory explanation available for delay.”

Now, examining the case of the respondent-plaintiff whether, in the facts and circumstances of the present case, the suit was within limitation, it may be noticed that without raising any grievance qua the grant of promotion to other employees while the respondent-plaintiff was in service, the plaintiff had retired in the year 1998. It was only after 12 years of the retirement, the benefit of promotion was claimed with retrospective effect which is not admissible. The service benefits can only be claimed while in service and the non-grant of promotion cannot be treated as recurring cause for the reason that grant of promotion to someone junior, needs to be challenged within the period of limitation so as to claim promotion in preference to the said employee. Once, a promotion order of a particular employee who is a junior, attains finality, the same cannot be challenged and the promotion with effect from the date the said employee was promoted, cannot be claimed unless and until the said claim is raised within the limitation provided keeping in view the date on which the cause of action accrued. Hence, the findings recorded by the Courts below that the challenge to the seniority irrespective of the date of issue and the claim of promotion though might not have been raised during the service career, the same can be raised at any given point of time being recurring cause is contrary to the settled principle of law in ***Suraj Mal's case (supra)***. Hence, findings recorded by the Courts below is perverse to the settled principle of law and are liable to be set aside and are accordingly set aside.

The question with regard to the challenge to the seniority list, which was issued in the year 2009, the same also could not have been entertained by the Courts below for the reason that though the suit was filed within a period of one year of the issuance of the said seniority list but no one above whom the respondent-plaintiff was seeking seniority, was impleaded as a party to the said suit.

Once, the employees, who are likely to be affected by the relief prayed for, the suit should not be allowed and keeping in view the claim raises in regard to the seniority no one, who is likely to be affected by the outcome, have been impleaded as party to the suit, hence, prayer could not have been allowed in favour of the respondent-plaintiff. The law on the said issue is also settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.3005 of 2000, titled as State of Bihar vs. Kameshwar Prasad Singh, decided on 27.04.2000***. The relevant paragraph of the said judgment is as under:-

“ 22. It appears that the High Court totally lost sight of the fact that in his petitions filed from time to time Brij Bihari Prasad Singh had not impleaded any of his seniors as party-respondents. In the absence of persons likely to be affected by the relief prayed for, the writ petitions should have normally been dismissed unless there existed specific reasons for non impleadment of the affected persons. Neither any reason was assigned by the writ petitioner nor the court felt it necessary to deal with this aspect of the matter. Ignoring such a basic principle of law has resulted in the supersession of 168 Inspectors and 407 Dy.SPs. The writ petition filed by Brij Bihari Prasad Singh being totally misconceived, devoid of any legal force and prayers made being in contravention of the rules applicable in the case deserved dismissal, which was

unfortunately not done with the result that the interests of many seniors have been threatened, endangered and adversely affected. The appeal of the State has, therefore, to be allowed by setting aside the impugned judgment.”

The entertainment of the suit by the Courts below is also by ignoring the settled principle of law in ***Kameshwar Prasad Singh's case (supra)***. Hence, after 12 years of retirement, the claim of promotion and that too by challenging the seniority could not have been entertained by the Courts below as the said claim was time barred.

Keeping in view the above, as the judgments of the Courts below are perverse to the settled principle of law noticed hereinbefore, the same cannot be sustained and are accordingly set aside. The suit filed by the respondent-plaintiff also stands dismissed.

The present Regular Second Appeal is allowed in above terms.

February 20, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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