

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

(101)

RSA-6093-2016 (O&M)

Date of Decision : 30.01.2023

Punjab State and others

...Appellants

Versus

Sukhdev Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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

Mr. J.P.S. Sidhu, Advocate for the respondent-plaintiff.

Harsimran Singh Sethi J. (Oral)

The present regular second appeal has been filed by the appellants-defendants/State of Punjab impugning the order passed by the trial court dated 14.08.2015 by which, the suit filed by the respondent-plaintiff in which he claimed promotion from the year 1985 to the post of Lab Attendant, has been allowed and also the order passed by the lower appellate court dated 29.01.2016 by which, the appeal filed by the appellants-defendants was dismissed and the judgment of the trial court was upheld.

Learned counsel for the appellants-defendants argues that in the present case, the claim of the respondent-plaintiff was that his juniors were promoted to the post of Lab Attendant in the year 1985 on which date, he was eligible for promotion but was ignored and, therefore, he was entitled

for promotion to the post of Lab Attendant from the date, his juniors have been granted the said benefit with all consequential benefits ignoring the fact that in the year 1985, the respondent-plaintiff was not eligible for promotion to the post of Laboratory Assistant as he was not matriculate. Learned counsel for the appellants-defendants argues that courts below have allowed the suit by ignoring the fact that the suit was filed 30 years after the cause of action has arisen and that too after 10 years of attaining the age of superannuation and the same was highly belated and was barred by the law of limitation.

Learned counsel for the respondent-plaintiff submits that the respondent-plaintiff did not had the knowledge about the order granting the benefit of promotion to his juniors and further that he had already passed the matriculate examination in the year 1988 hence, not only the respondent-plaintiff was eligible for promotion but the suit was also well within the period of limitation.

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

With regard to the claim of the respondent-plaintiff on merit that he was eligible to be promoted on the date when his juniors were promoted in the year 1985, is to be seen on the basis of evidence, which has come on record. It is a conceded fact that the promotions of the juniors were made w.e.f. 1985 on which date, the respondent-plaintiff was not eligible to be promoted as he did not had matriculation qualification to his credit, which was essential qualification for appointment to the said post, which qualification was concededly acquired by the respondent-plaintiff in

the year 1988.

Once, the juniors were promoted in the year 1985 on the basis of the qualification, which they had and on the date of their promotion despite seniority, the respondent-plaintiff was ignored on the basis of qualification, no fault can be found in the said action of the appellants-defendants as respondent-plaintiff was not entitled for promotion in the year 1985.

Even otherwise, the promotions to the post of Lab Assistant were made with effect from the year 1985. The respondent-plaintiff attained the age of superannuation in the year 2004 and retired. It is after 10 years of his retirement, the present suit was filed claiming promotion with retrospective effect from the date the juniors were promoted i.e. 1985. Nothing has come on record to show that the promotion of the juniors was not to the knowledge of the respondent-plaintiff. Even otherwise, the respondent-plaintiff is claiming promotion from retrospective effect hence, he should have been vigilant enough to claim his right while in service at the time when promotions were effected. It is a conceded position that while in service, no claim for promotion to the post of Lab Attendant was raised by the respondent-plaintiff at any given point of time and the suit was filed after 10 years of the retirement.

Keeping in view the settled principle of law settled in CWP No. 37452 of 2019 titled as ***O.P. Sardana Vs. Haryana Sahari “Vikas Pradhikaran and others***, decided on 29.01.2020, the suit is required to be filed within a reasonable time of cause of action being arisen. The relevant portion of judgment is reproduced below for ready reference:-

“The present writ petition is filed for quashing of the seniority list dated 21.10.1994 with a further prayer the petitioner should be placed at Sr.No.10 in the seniority list instead of Sr. No.31.

Admittedly, the seniority list is of the year 1994, whereas, the present writ petition is filed in the year 2020 after a gap of 26 years. Moreover, the petitioner was allegedly due for promotion in the year 1988 but he was promoted in the year 2006 but even at that point of time he did not raise any objection or challenge the same. The petitioner has since retired in the year 2014. No explanation for the delay is forthcoming.

The argument that in case the relief is granted to the petitioner, it will enhance his pension and in case he is denied the relief, it would amount to recurring loss and therefore, delay is not fatal deserves to be rejected in view of the facts as well as the settled principle of law on the question of delay.

*In the case of **Tarsem Pal vs. Punjab State Power Corporation Limited and others, 2013(3) SLR 314**, the petitioner was serving as a Clerk with the Punjab State Power Corporation Limited and retired on 31.3.2005. He filed the writ petition after more than five years of his retirement praying for grant of proficiency step up in the pay scale on completion of 23 years of service. The same was dismissed by holding in para No.12 as under:-*

“The petitioner retired from service on 31.3.2005 and the claim pertaining to the benefit of proficiency step up, which may be admissible to the petitioner during his service career, was sought to be raised more than five years after his retirement, the claim made at such a later stage deserves to be dismissed on account of delay and laches only. The petitioner could raise a grievance about the pay scales admissible to him or the last pay drawn by

him within a reasonable time after his retirement. He cannot be permitted to raise the same at any time on the plea that the same is recurring cause of action.”

*The issue of delay after taking into consideration the judgment rendered by the **Hon'ble Apex Court in the case of M.R. Gupta Vs. Union of India and others, 1995 (4) RSJ 502**, and placing reliance on the judgment rendered by the **Hon'ble Apex Court in the case of Jagdish Lal Vs. State of Haryana, (1997) SCC 538**, the Co-ordinate Bench of this Court in the case of **Prem Nath and others Vs. State of Punjab and others, CWP No.9025 of 2016, decided on 14.07.2017**, dismissed the petition on the question of delay, wherein the petitioner chose to agitate only after the retirement, by observing as under:-*

*“9. At this stage, counsel appearing for the petitioners would make an attempt to overcome the obstacle of delay by placing reliance upon a Full Bench Judgment of this Court in **Saroj Kumar vs. State of Punjab, 1998(3) SCT 664**. Counsel would argue that as per dictum laid down in *Saroj Kumar's case(supra)*, matters of pay fixation involve a recurring cause of action and as such, writ petitions for such claim cannot be dismissed on the ground of delay and laches and the Court at the most, may restrict the arrears upto 38 months from the date of filing of the petition and disallow the arrears for the period for which even a suit had become time barred.*

*10. The reliance placed by counsel upon the judgment in *Saroj Kumar's case*, is wholly misplaced. The observations and aspect of delay in *Saroj Kumar's case*, were in the light of the judgment of the Supreme Court in **M.R. Gupta vs. Union of India and others, 1995(4) RSJ 502**. In *M.R. Gupta's case(supra)*, it had been categorically held that so long as an employee “is in service” a fresh cause of action arises every month when*

he is getting his monthly salary on the basis of a wrong calculation made contrary to rules. It was further held that the claim to be awarded the correct salary on the basis of a proper pay fixation “is a right which subsists during the entire tenure of service”.

11. In the present case, however the petitioners choose not to agitate their claim while in service. It is much subsequent to their superannuation that they have woken up and seek to gain impetus from certain decisions that may have been rendered in the case of similarly situated employees.

12. Considering the dictum of law as laid down in Chariman, U.P. Jal Nigam's case (supra), the petitioners herein are not entitled to any relief as prayed for and the petition deserves to be dismissed on the sole ground of delay and latches.”

*In the present case, the petitioner is raising the plea **after a gap of 26 years** and that too for setting aside the seniority list of the year 1994.*

In view of the above, the present writ petition is accordingly dismissed on the ground of delay and latches.”

In the present case, the cause of action arose to the respondent-plaintiff in the year 1985 and from 2004 i.e. after retirement of the respondent-plaintiff, there was not even a master and servant relationship between the respondent-plaintiff and the appellants-defendants hence, filing of a suit in the year 2014 was much beyond the limitation provided for the redressal of his grievance keeping in view the grievance sought to be redressed. The courts below have completely misread the said proposition of law as well as relevant facts of the present case while allowing the suit filed by the respondent-plaintiff and dismissing the appeal preferred by the

courts below while passing the impugned orders.

Keeping in view the above, the appeal of the appellants-defendants succeeds and the judgment of the trial court dated 14.08.2015 as well as judgment of the lower appellate court dated 29.01.2016, are set-aside being contrary to the facts as well as settled principle of law.

The suit filed by the respondent-plaintiff is accordingly dismissed and the present regular second appeal is allowed.

CM-16045-C-2016

As the main appeal has been allowed, the present application stands disposed of.

January 30, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No