

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

(106)

**CM-4554-C-2023 in
RA-RS-25-2023 in/and
RSA-395-2018
Date of Decision : May 03, 2023**

Harjinder Pal

.. Appellant

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Umesh Aggarwal, Advocate, for the applicant-appellant.

Mr. Gurvinder Singh, Assistant Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-4554-C-2023

Present application has been filed for condonation of delay of
09 days in filing the review application.

Keeping in view the facts mentioned in the application, which
are duly supported by an affidavit, the application is allowed and delay of
09 days in filing the review application is condoned.

RA-RS-25-2023 2023:PHHC:067767

Present application has been filed for recalling the order dated
16.03.2023 by which, the appeal was disposed of having been not pressed.

As per the applicant-appellant, the order was passed in his presence and after seeking the instructions from him but now, the applicant has a change of heart and has changed his mind to contend that he infact wants the present appeal be decided on merits.

This conduct of the applicant-appellant is not appreciated as he was present in the Court and the order sought to be reviewed was passed in his presence after taking due instructions from him. In case, he wanted the appeal to be decided on merits, he could have requested at the time of passing of the order.

Still, keeping in view the fact that in case a litigant wants an order on merit, the Court should be ready to pass the same. The order dated 16.03.2023 is reviewed and recalled and the main appeal is restored to its original number and status.

Review application is allowed.

RSA-395-2018

On the request of learned counsel for the appellant, present Regular Second Appeal is taken up for hearing.

In the present appeal, the challenge is to the judgment and decree dated 17.10.2015 passed by the trial Court by which, the suit filed by the appellant-plaintiff was dismissed on merits as well as on the ground of delay. The said judgment of the trial Court has been upheld by the lower Appellate Court vide judgment and decree dated 05.07.2017, hence, the present Regular Second Appeal.

Certain facts needs to be mentioned for the correct appreciation of the controversy in question.

An advertisement was issued by the Government of Punjab on 28.06.2001 for making appointments to the post of Social Studies Master (Male). Some of the said posts were reserved for the ex-serviceman. The appellant-plaintiff competed against 45 posts reserved for the ex-serviceman but as per the result, which was declared on 25.11.2001, the appellant-plaintiff could not succeed in getting himself selected. The said non-selection against the post of Social Studies Master, which selection was finalized by the respondents by the declaration of result on 25.11.2001, was challenged by the appellant-plaintiff by filing CWP No.19222 of 2002. The said writ petition was decided by this Court by directing the Department to decide the representation filed by the appellant-plaintiff raising his grievance, which representation was decided and the claim raised by the appellant-plaintiff in the representation was rejected, which action was once again challenged by the appellant-plaintiff by filing CWP No.15902 of 2003. The said writ petition was decided by the Coordinate Bench of this Court on 22.07.2004 by allowing the petitioner to withdraw the same with liberty to file a civil suit.

After withdrawing the writ petition on 22.07.2004, no action was taken by the appellant-plaintiff and ultimately, a civil suit was filed in November 2008, which was filed in District Amritsar, which suit was returned on 21.03.2013 to be filed before the Court having appropriate jurisdiction and ultimately, a suit was filed by the appellant-plaintiff before a Civil Judge, Chandigarh on 26.10.2013.

It may be noticed that though selection was being challenged but in the civil suit filed, no candidate who was selected and was likely to

be affected with the outcome of the suit, was made party.

The suit filed by the appellant-plaintiff came to be decided by the trial Court vide judgment and decree dated 17.10.2015 and the Court held that the suit filed by the appellant-plaintiff was beyond limitation as, even if 3 years limitation is taken from the date the writ petition filed by the appellant-plaintiff was withdrawn i.e. 22.07.2004, the same could have been filed upto 21.07.2007 whereas, the suit was filed in November 2008 which was much beyond the limitation of three years. Though, the suit was dismissed on the ground of limitation, even the case on merit was discussed but no relief was given even on merits in favour of the appellant-plaintiff.

Feeling aggrieved against the decision of the trial Court dated 17.10.2015, appeal was preferred which appeal has also been dismissed on the ground that the suit filed was beyond limitation and the findings of the trial Court on the said issue are affirmed vide judgment and decree dated 05.07.2017. Hence, the present Regular Second Appeal.

At the outset, learned counsel for the appellant-plaintiff was requested to show as to how the suit filed in November 2008 challenging the selection which selection was finalized in November 2001 can be treated as within limitation period of three years.

Learned counsel for the appellant submits that though it is a conceded position that the selection in question was challenged by the appellant-plaintiff by filing a writ petition which was withdrawn by him on 22.07.2004 to enable him to file a civil suit and the civil suit was required to be filed upto 21.07.2007 and the same was filed in November 2008 but the Courts below failed to appreciate the fact that he had given

legal notices in the integrum which will increase the limitation period upto the date of actual filing of the suit in November 2008.

In the present case, the challenge to the selection process was raised by the appellant-plaintiff in the year 2002 before this Court by filing a CWP No. 19222 of 2002. The said writ petition was disposed of by giving a direction to the respondent-State to decide the representation filed by the appellant-plaintiff, which was rejected and the said rejection of the claim at the hands of the Department was again challenged by the appellant-plaintiff by filing a writ petition being CWP No.15902 of 2003. The said writ petition was withdrawn by the appellant-plaintiff on 22.07.2004 with liberty to approach the Civil Court, hence, even if the limitation is to be seen from the date when the liberty was sought to approach the trial Court, the suit filed was not within limitation as, the appellant-plaintiff was challenging an order passed in the year 2003 rejecting his claim, was filed in the year 2008.

Concededly, the suit was not filed within a period of three years of passing of the impugned order rejecting the claim of the plaintiff, which order was passed in 2003. Even if the limitation is to be seen from the date when the liberty was given by the Coordinate Bench of this Court on 22.07.2004, the suit was filed much beyond the limitation of three years as concededly, the suit was filed in November 2008. That being so, it cannot be said that the suit was filed within the limitation prescribed.

The argument of the learned counsel for the appellant that he had given legal notices, which will extend the period of limitation, the same cannot be accepted. Once, by a written order, the claim of the appellant was rejected in the year 2003 by the Department, which order was passed in

pursuance to the direction given by this Court, it was incumbent upon the appellant-plaintiff to challenge the said order within the limitation of three years as provided under law. In the present case, the suit was filed even beyond four years of the liberty being granted by the Coordinate Bench of this Court on 22.07.2004, hence, it cannot be said that the findings recorded by the Courts below that the suit was beyond limitation, is perverse in any manner.

Even otherwise, the Courts below have decided the claim on merits against the appellant-plaintiff. It is a conceded position that in the present case, the selection was challenged by the appellant-plaintiff. None of the selected candidates, who were selected, were party to the said proceedings. In the absence of any selected candidate impleaded as a party to the proceedings, even otherwise the suit could not have been decreed even if the appellant would have made any case on merits. Hence, keeping in view the totality of the facts and circumstances of the present case, no interference is called for by this Court qua the judgment of the Courts below impugned in the present regular second appeal.

Dismissed.

May 03, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes