

[RSA-1681-1995 \(O&M\)](#)

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

(201)

[RSA-1681-1995 \(O&M\)](#)

Date of decision:- 29.07.2024

Punjab State Electricity Board, Patiala and another ... Appellants**Versus****Smt. Krishana (now deceased) through LRs ... Respondents****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. Ashish Verma, Advocate
for the appellants.

Mr. Rajesh Sethi, Advocate and
Ms. Preeti Bansal, Advocate
for the respondent.

SUVIR SEHGAL, J. (ORAL)**CM-2788-C-1995**

1. For the reasons given in the application, delay in re-filing the appeal is condoned.
2. Application is disposed of.

Main case

1. Defendants-appellant are in second appeal before this Court challenging the concurrent finding recorded by the Courts below.
2. Smt. Krishna, plaintiff-respondent, filed a suit for declaration pleading that she joined as a Lower Division Clerk on 10.12.1976 and her service was regularized w.e.f. 08.07.1982. Claiming that she was entitled to count the service rendered by her from the date of initial joining, towards



seniority and promotion, she filed a suit for declaration and claimed consequential relief.

3. Upon being served, defendants contested the suit by filing a written statement, taking a stand that plaintiff-respondent joined as a temporary employee and the service, rendered as a temporary employee, cannot be counted. An objection was taken that the suit is barred by time and is bad for non-joinder and mis-joinder on necessary parties. Plaintiff filed a replication re-asserting the claim. On the basis of the pleadings of the parties, issues were framed. After the parties led evidence and were heard, Trial Court by judgment dated 03.06.1994, decreed the suit. Defendants remained unsuccessful before the First Appellate Court and the learned Additional District Judge, Faridkot rejected the appeal vide judgment dated 18.02.1995, resulting in the institution of the present appeal.

4. Counsel for the appellants has argued that the suit filed by the plaintiff was hopelessly barred by time. It is his argument that a specific condition was imposed in the appointment letter dated 08.07.1982, Ex. P-9, that seniority will be counted from the date of joining and despite this fact, the plaintiff did not question this clause and filed a suit, after a long period on 16.04.1993 without impleading the affected parties. He urges that service, rendered prior to regularization, is not liable to be counted for service benefits.

5. On the contrary, counsel for the respondent while supporting the judgment and decree passed by both the Courts below, has placed reliance upon the judgment of the Supreme Court in ***Vasant Kumar Jaiswal***



Versus State of Madhya Pradesh, (1987) 4 SCC 450 to contend that in the absence of any statutory provision or executive instructions laying down the rule for determination of seniority, the normal principle applicable would be to determine the seniority on the basis of length of service.

6. I have heard counsel for the parties and considered their respective submission, besides examining the record requisitioned from the Trial Court.

7. On an objection raised by the defendant-appellants, Trial Court framed Issue No.3 to the effect as to whether the suit is barred by limitation. Both the Courts have returned the finding under this issue against the defendants by holding that the cause of action arose to the plaintiff one week before the institution of the suit, when the defendants refused to admit her claim for counting of seniority from the date of initial appointment. This finding recorded by the Courts below is against the settled proposition of law.

8. The legal issue has been settled by the Supreme Court ***Union of India Versus Tarsem Singh, (2008) 8 SCC 648*** and it has been observed as under:-

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is



based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

9. There is no denying that the plaintiff-respondent was appointed in July, 1982 and she joined service immediately upon the issuance of the appointment letter. She submitted in joining letter and accepted the terms and conditions of the appointment order. One of the conditions in the



appointment order was that the seniority would be counted from the date of joining of service. For more than a decade, she continued working on the post of a Lower Division Clerk without raising any objection. She instituted a suit for declaration in April, 1993 claiming that she is entitled to count the service, rendered by her, prior to regularization for purposes of seniority and promotion. She did not implead any senior, who was likely to be affected by such declaration. Both the Courts below have ignored that the suit was barred by limitation and the observations in **Tarsem Singh's** case (supra) are clearly attracted to the facts of the present case. As the findings recorded by both the Courts below are against the settled legal position, they cannot be sustained and hereby reversed.

10. For the reasons recorded above, the judgments and decrees passed by both the Courts below are set aside and suit, filed by the plaintiff –respondent, is dismissed throughout with no order as to costs. Appeal is allowed.

11. Pending application(s), if any, stands disposed of.

(SUVIR SEHGAL)
JUDGE

29.07.2024
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No