

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(102)

RSA No. 664 of 1995
Date of Decision : 20.01.2024

Kashmir Singh

...Appellant

Versus

The Punjab State through the Secretary to Government of Punjab
and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Prateek Mahajan, Advocate and
Mr. Daanish Mahajan, Advocate for the appellant.

Mr. Rohit Ahuja, Deputy Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

1. The present regular second appeal has been filed challenging the judgment and decree of the lower appellate court dated 20.09.1994 by which the judgment and decree of the trial court dated 19.10.1992 has been set-aside and the suit filed by the appellant-plaintiff has been dismissed on the ground of limitation.
2. Certain facts needs to be mentioned herein for correct appreciation of the issue in hand.
3. The appellant-plaintiff joined the services of the respondent-department as a Conductor in the year 1976. In the year 1980, the Municipal Corporation, Amritsar was created and by the creation of the said Municipal Corporation, the appellant-plaintiff was allocated to join the services of Nigam Transport, Amritsar, where the appellant-plaintiff

went keeping in view the direction given by the authorities concerned. Though, the appellant-plaintiff was a regular employee with the Punjab Roadways but the Nigam Authorities did not allow the appellant-plaintiff to join there and when the appellant-plaintiff reported back to Punjab Roadways, Amritsar to allow him to work there, he was not allowed to join back on the ground that he already stands transferred to the Nigam Authorities.

4. As the appellant-plaintiff was not being allowed to join back and he was not being paid any wages, the appellant-plaintiff approached the authorities under the Payment of Wages Act, 1936 by filing an application with a prayer to direct the Punjab Roadways for the grant of wages we.f. 01.01.1980 to 31.12.1980 for which period, the appellant-plaintiff had not been paid wages. The said application remained pending for a period of five years and the same was allowed on 21.12.1986 giving direction to the Punjab Roadways to make the payment of wages to the appellant-plaintiff for the period in question and to sort out the dispute regarding the joining of the duties.

5. On 14.05.1987, the appellant-plaintiff was allowed to resume his duties with the parent department i.e. Punjab Roadways and he was paid the salary for the period in question as directed by the authorities under the Payment of Wages Act, 1936.

6. As the appellant-plaintiff was only allowed to join back the duties on 14.05.1987, the appellant-plaintiff claimed the wages from 01.01.1981 onward till the reinstatement along with the continuity of

service. The said benefit was not being given to him and ultimately, on 15.03.1990 the appellant-plaintiff served a notice under Section 80 CPC upon the respondents-defendants for the grant of said benefit and as no benefit was extended to him, a civil suit was filed claiming the continuity in service as well as the benefit of wages for the period from 01.01.1981 onward till the reinstatement. The suit filed by the appellant-plaintiff was decreed by the trial Court on 19.10.1992 and a direction was issued to the respondents-defendants to give the benefit of continuity in service to the appellant-plaintiff along with the wages for the period the appellant-plaintiff was not allowed to join back.

7. Feeling aggrieved against the said decision, an appeal was preferred by the respondents-defendants before the lower appellate court, which came to be allowed on 20.09.1994. The lower appellate court though upheld the judgment of the trial court on merits but the issue qua the maintainability of the suit on the ground of limitation was held in favour of the respondents-defendants and the appeal was allowed and the suit filed by the appellant-plaintiff was dismissed. The judgment of the lower appellate court dated 20.09.1994 is under challenge in the present regular second appeal.

8. Learned counsel for the appellant-plaintiff at the outset, submits that in the suit, two reliefs were sought i.e. wages for the period starting from 1981 till 1987 as well as the benefit of continuity in service. Learned counsel for the appellant-plaintiff submits that the appellant-plaintiff is not pressing his prayer qua the grant of wages for the service

rendered from 1981 till 1987 but keeping in view the fact that he was also asking for the benefit of continuity in service so that he could get appropriate benefit of the relevant service period in the remaining service as well as the pensionary benefits as the suit was very much within limitation for the grant of benefit of continuity in service, which fact has not been appreciated by the lower appellate court.

9. Learned counsel for the respondents submits that once the appellant-plaintiff was reinstated in service but no benefit of continuity in service was granted at that time hence, even on issue of grant of benefit of continuity in service, the appeal is time barred.

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

11. It may be noticed that there is no appeal filed by the State of Punjab upholding the judgment and decree of the trial court dated 19.10.1992 on merits by the lower appellate court. The only question, which arise before this Court is whether, even for the grant of benefit of continuity in service, whether the suit was within limitation or not.

12. It may be noticed that the appellant-plaintiff was reinstated in service on 14.05.1987 and he had served the notice under Section 80 CPC on 15.03.1990 and thereafter, filed the suit claiming the continuity of service on 22.05.1990.

13. That being the factual position, the suit is within limitation keeping in view the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 10763 of 2011 titled as *M/s Disha Constructions and*

others Vs. State of Goa and another, decided on 09.12.2011, wherein, a suit filed within a period of three years and two months by including the notice period is within the limitation. The relevant paragraph 16 of the said judgment is as under -

“16. In our view, proper interpretation of Section 15(2) of the Act would be that in computing the period of limitation, the period of notice, provided notice is given within the limitation period, would be mandatorily excluded. That would mean a suit, for which period of limitation is three years, would be within limitation even if it is filed within two months after three years, provided notice has been given within the limitation period. In such a case, the period of notice cannot be counted concurrently with the period of limitation. If it is done, then period of notice is not excluded. Any other interpretation would be contrary to the express mandate of Section 15(2) of the Act.”

14. In the present case, the notice under Section 80 CPC was served upon the respondents-defendants on 15.03.1990 i.e. within a period of three years of reinstatement on 14.05.1987, hence, the suit filed by the appellant-plaintiff claiming the continuity in service is perfectly within limitation.

15. Further, on merits, the courts below have already come to the conclusion that not allowing the appellant-plaintiff to join back the services by the respondents-defendants was arbitrary and illegal, as despite the fact that the appellant-plaintiff was a regular employee and he was transferred to the Nigam Authorities on the creation of the Municipal Corporation, Amritsar, where he was not allowed to join due to which,

the litigation started, hence, there is no ground that the appellant-plaintiff should not be allowed the benefit of continuity in service upon reinstatement in service on 14.05.1987. Further, it has already come on record that while passing the order under the Payment of Wages Act, 1936, it was held that the appellant-plaintiff was the employee of the Punjab Roadways and direction was issued to take appropriate work from him keeping in view his appointment. In pursuance to the said appointment, he was taken back on duty on 14.05.1987.

16. Once, the appellant-plaintiff was a regular employee of the respondents-defendants and it has already come in evidence that action of the respondents-defendants in not allowing him to discharge duties was bad and ultimately, he was allowed to join back the duties again and it is a matter of fact that he was allowed to work upto the age of superannuation, hence the grant of benefit of continuity in service in the facts and circumstances of the present case keeping in view the evidence, which has already come on record, is perfectly valid and legal. Even the courts below have granted the said benefit to the appellant-plaintiff which findings have never been challenged by the respondents-defendants while filing the appeal or the counter claim as the case may be, hence, the judgment of the lower appellate court is partly set-aside qua dismissing the suit filed by the appellant-plaintiff on the ground of limitation and even qua the grant of benefit of continuity in service.

17. It is made clear that as the suit has not been pressed by the appellant-plaintiff qua the grant of wages from the year 1981 to 1987, the

same is allowed qua the grant of benefit of continuity in service and the appellant-plaintiff will be treated in service from the date of initial appointment till the date he actually retired. All the benefits, which accrue to the appellant-plaintiff on the grant of the said benefit be computed by the respondent-department and benefit of arrears of salary as well as the arrears of the pensionary benefits as well as pension be granted to the appellant-plaintiff. Let the order be complied with within a period of two months of the receipt of copy of this order.

- 18. No other point was argued.
- 19. The present regular second appeal is partly allowed.

January 20th, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No