



RSA-203-1996 (O & M)

-1-

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

206-1.

RSA-203-1996 (O & M)
Date of decision: 23.07.2024

DHARAM PAL

...APPELLANT

VS.

THE STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Deepak Agnihotri, Advocate for the appellant.

Ms. Amrita Garg, AAG, Punjab.

SUVIR SEHGAL J.

1. Plaintiff-appellant is in second appeal before this Court assailing the concurrent finding recorded by the Courts below.

2. Plead case of the plaintiff is that he was appointed as a Constable Wireless Operator with the Punjab Police and was given an option to serve in the BSF in October, 1986, which he accepted. His service was terminated as R.T. cadre was abolished and alongwith some junior colleagues, he was retrenched with effect from 14.04.1986. Two juniors, namely, Hari Ram and Manjit Singh, were re-absorbed as Constable Messenger between the years 1969 and 1970. On recreation of

**RSA-203-1996 (O & M)****-2-**

R.T. cadre with effect from 16.04.1971, they were upgraded to the post of Constable Operator. Plaintiff applied for re-appointment and was ordered to be enlisted as a Wireless Operator from 21.05.1974 after relaxing the age limit. He was later appointed as temporary Constable R.T. Operator. Claiming that he was entitled to be considered much before his juniors, who were re-appointed prior to him, he filed a suit for restoration of his seniority and sought a decree to the effect that he be deemed to be in service from the date his junior was absorbed.

3. Upon notice, suit was contested by the defendants by taking various preliminary objections. A categorical stand was taken that no representation was ever submitted by the plaintiff against joint seniority list circulated on 27.02.1978 and that the representation submitted by him in the year 1981 was rejected. It is further stated that no person junior to the plaintiff, was promoted and all the retrenched persons were treated as open market candidates. Plaintiff filed replication controverting the stand taken by the defendants in their written statement. Issues were framed on the basis of pleadings of the parties, who led evidence and support of their case. After they were heard, Trial Court by judgment and decree dated 31.10.1984, dismissed the suit. Plaintiff remained unsuccessful before the learned Additional District Judge, Chandigarh, and his appeal was dismissed on 22.08.1995, resulting in the filing of the present appeal.

4. Besides challenging the judgments on merits, Mr. Deepak Agnihotri, counsel for the appellant has argued that both the Courts have



RSA-203-1996 (O & M)

-3-

erred in dismissing the suit as being barred by time even though, no issue was framed on the question of limitation.

5. Per Contra, learned State counsel has argued that under Section 3 of the Limitation Act, 1963, it is obligatory for the Court to examine as to whether the suit is within time.

6. I have heard counsel for the parties and considered their respective submissions.

7. The argument of counsel for the appellant deserves to be noticed and rejected. The law is well settled. In **V.M. Salgaocar and Bros. Versus Board of Trustees of Port of Mormugao and another** (2005) 4 SCC 613, Supreme Court has held as follows:-

“20. The mandate of Section 3 of the Limitation Act is that it is the duty of the court to dismiss any suit instituted after the prescribed period of limitation irrespective of the fact that limitation has not been set up as a defence. If a suit is ex facie barred by the law of limitation, a court has no choice but to dismiss the same even if the defendant intentionally has not raised the plea of limitation.

21. This Court in Manindra Land & Building Corpn. Ltd. v. Bhutnath Banerjee [(1964) 3 SCR 495 : AIR 1964 SC 1336] held (AIR para 9):

“Section 3 of the Limitation Act enjoins a court to dismiss any suit instituted, appeal preferred and application made, after the period of limitation prescribed therefor by Schedule I irrespective of the fact whether



RSA-203-1996 (O & M)

-4-

the opponent had set up the plea of limitation or not. It is the duty of the court not to proceed with the application if it is made beyond the period of limitation prescribed. The Court had no choice and if in construing the necessary provision of the Limitation Act or in determining which provision of the Limitation Act applies, the subordinate court comes to an erroneous decision, it is open to the court in revision to interfere with that conclusion as that conclusion led the court to assume or not to assume the jurisdiction to proceed with the determination of that matter.”

8. Section 3 of the Limitation Act, 1963, casts a duty on the Court to dismiss a suit if it is barred by time, even if limitation has not been set up as a defence. The argument of counsel for the appellant does not hold water.

9. Adverting to the facts of the present case, a seniority list was circulated by the defendants in February, 1978, and the plaintiff, who was in service at that time, never objected to it. No representation was submitted by him, objecting to his placement in the seniority list. For the first time, he filed a representation more than three years of the issuance of the seniority list and instituted the suit before the Trial Court on 05.01.1983. Suit was filed by him after almost 5 years of the circulation of the seniority list. In **State of Punjab and others Versus Gurdev Singh (1991) 4 SCC 1** and **State of Punjab Versus Rajinder Singh 1999 SCC**

(*L & S*) **664**, Supreme Court has held that the Limitation Act, 1963, prescribes a period of three years for filing a suit for declaration from the date, the cause of action has arisen. Civil suit filed by the plaintiff is clearly barred by time.

10. There is no illegality or infirmity in the judgment and decrees passed by the Courts below, which are affirmed.
11. Appeal sans merit and is hereby dismissed with no order as to costs.
12. Pending application(s), if any, is disposed of.

23.07.2024
sheetal

(SUVIR SEHGAL)
JUDGE

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