



RSA-1181-1998 (O&M)

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

(227)

RSA-1181-1998 (O&M)
Date of decision:- 07.05.2024

Bhan Singh**... Appellant**

Versus

D.P.I. School and others**... Respondents****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. Alok Mittal, Advocate and
Mr. Shubham Thakur, Advocate
for the appellant.

Mr. Amit Chaudhary, DAG, Punjab
for the respondents.

SUVIR SEHGAL, J. (ORAL)

1. Plaintiff-appellant is before this Court by way of second appeal challenging the concurrent finding recorded by the Courts below, whereby his suit has been dismissed as being barred by limitation.

2. Plead case of the plaintiff-appellant is that he was employed in the District Board on 25.02.1943 and was confirmed on 01.04.1949. On provincialised of the employees of the District Board, he became a government employee on 01.10.1957 and became entitled to pension and gratuity under the government rules on retirement on 31.10.1979. However, retiral benefits were calculated w.e.f. 01.04.1949 instead of 25.02.1943. After serving a notice under Section 80 CPC, he filed a suit for declaration. Upon notice, defendants appeared and contested the suit. The service particulars of the plaintiff were admitted, however, a stand was taken that



pension of local body employees is to be calculated from the date they start contributing to the Contributory Provident Fund (CPF). It was further averred that no provincialised employee was entitled to pension, unless he was declared as a quasi-permanent by the competent authority. Plaintiff filed a replication controverting the stand taken by the defendants in their written statement. On the basis of the pleadings of the parties, issues were framed and after they led evidence, Trial Court by judgment and decree dated 06.08.1994, dismissed the suit as being barred by time. However, Issue No.1 was decided in favour of the plaintiff and Trial Court came to the conclusion that the entire service rendered by the plaintiff from 25.02.1943 till his retirement was liable to be counted for the purposes of pensionary benefits. Plaintiff-appellant filed a first appeal, which was dismissed by the learned Additional District Judge, Faridkot by judgment dated 08.11.1997, resulting in the institution of the present appeal.

3. The substantial question of law, which arises for consideration and was framed by this Court while admitting the appeal is as under:-

“Whether suit for pensionary benefits can be barred by time.”

4. I have heard counsel for the parties and considered their respective submissions, besides examining the record with their able assistance.

5. The question of law is no longer *res integra* and has been settled by the Courts in a plethora of judgments.

6. In ***M.L. Patil (Dead) through LRs Versus State of Goa and another, (2023) 1 SCC 660***, Apex Court has held that right to pension is a continuing cause of action and there is no justification for denying arrears of pension.

7. In ***Union of India Versus Tarsem Singh, (2008) 8 SCC 648***, Supreme Court has held:-



“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. In so far as the consequential relief of recovery of arrears for a past period is concerned, 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.”

8. Relying upon a Full Bench of this Court in **Saroj Kumari Versus State of Punjab, 1998 (3) SCT 664**, a Co-ordinate Bench of this Court is **Sohan Singh Versus State of Punjab, 2006 (4) SCT 452** has held that the claim for pension cannot be rejected on the grounds of delay and laches as it is not a one time action, but a continuing wrong. Every month an



employee is entitled to pension and the right accrues to him every month when he is not paid the pension as per his entitlement.

9. In view of the settled legal position, the substantial question of law framed by this Court is answered in favour of the appellant.

10. Adverting to the facts of the present case, the plaintiff-appellant retired from service on 31.10.1979 and vide order, Ex. P-1, he was informed that he is being granted pension w.e.f. 01.04.1949. The Courts below came to the conclusion that the right accrued to him in 1979 and the suit for declaration instituted by him on 15.03.1989 is barred by limitation. This finding, which has been recorded under Issue No. 3, is clearly erroneous. Pension being a continuing cause of action, it cannot be said that the limitation for filing a suit for declaration claiming retiral benefits, would be three years. Consequently, the finding recorded by the Courts below under Issue No.3 is reversed.

11. As a result of the afore-going discussion, suit of the appellant is held to be within time. Appellant is entitled to pension by counting the entire service rendered by him w.e.f. 25.02.1943, however, the claim for arrears is restricted to a period of 38 months, prior to the date of institution of the suit on 15.03.1989.

12. Appeal is disposed of.

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

(SUVIR SEHGAL)
JUDGE

07.05.2024
kamal

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