

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

205

RSA-2687-1998 (O&M)
Date of Decision :16.04.2024

Manmohan Singh**...Appellant**

Versus

State of Punjab and another**...Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Sanjeev Sharma, Advocate for the appellant.

Mr. Rohit Ahuja, DAG, Punjab.

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Harsimran Singh Sethi, J. (Oral)

1. In the present regular second appeal, challenge is to judgment and decree of the Courts below by which, suit filed by the appellant-plaintiff qua the grant of higher emoluments for the period starting from 01.01.1981 to 4.12.1982 in the pay scale of Rs.1200-1850, has been rejected.

2. It may be noticed that appellant-plaintiff, who was working as Assistant Director (Class-II) in the office of Director of Industries, Punjab was given charge of the post of Officer on Special Duty vide order dated 20.12.1980 as stop gap arrangement. In the said order dated 20.12.1980, it was clearly mentioned that appellant-plaintiff will work on the said post in addition to his own duties without any additional remuneration. Appellant-plaintiff discharged the duties of the said post upto 04.12.1982 and,

thereafter, again started discharging duties of the post of Assistant Director. In the meantime, it is the case of the appellant-plaintiff that he filed several representations before the competent authority claiming the benefit of higher pay for the period he discharged duty on the post of officer on special duty i.e. from 01.01.1981 to 04.12.1982 but the said representations were rejected and the last rejection of the representation of the appellant-plaintiff was on 30.10.1987.

3. Without challenging the said rejection order dated 30.10.1987, a civil suit was filed by the appellant-plaintiff in the year 1988 claiming benefit of higher pay scale for the period starting from 01.01.1981 to 04.12.1982. The said civil suit was dismissed by the trial Court Court vide judgment and decree dated 13.12.1991 being time barred. Feeling aggrieved against the said judgment and decree of the trial Court, appellant-plaintiff filed appeal before the lower Appellate Court, which also came to be dismissed by the lower Appellate Court vide judgment and decree dated 18.09.1997. Hence, the present regular second appeal.

4. Learned counsel for the appellant-plaintiff argues that keeping in view the settled principle of law once, it is a conceded fact that appellant-plaintiff had discharged the duties of the higher post, appellant-plaintiff is entitled for the remuneration of the higher post even though, the same had been performed in addition to his duty as Assistant Director.

5. Learned counsel for the respondents submits that once, in the order dated 20.12.1980 by which, appellant-plaintiff had been given charge of the post of Officer on Special Duty additionally, it was incorporated that he will not get any extra remuneration for the additional duty performed, the

said order was required to be challenged within limitation period. Learned counsel for the respondents further submits that even the representation submitted by the appellant-plaintiff was rejected by the authority concerned vide order dated 30.10.1987 but even said order of rejection of his representation was also never challenged by the appellant-plaintiff hence, the civil suit filed by the appellant-plaintiff has rightly been rejected by the Courts below being time barred.

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

7. It is a settled principle of law settled by the Hon'ble Supreme Court of India in *Civil Appeal No.1852-1989 with Civil Appeal No.4772-1989, titled as, State of Punjab and others vs. Gurdev Singh and Ashok Kumar, decided on 21.08.1991,* that even void orders are to be challenged within period of three years. Even if, it is assumed for the sake of argument that appellant-plaintiff was entitled for the grant of benefit of higher pay scale while working on the said higher post even on current duty charge basis but once by a written order dated 20.12.1980 grant of said benefit was declined then in order to get said benefit of remuneration, said order dated 20.12.1980 should have been challenged by the appellant-plaintiff within a period of three years from the date of passing of the said order. In the present case, concededly the said order dated 20.12.1980 has never been challenged by the appellant-plaintiff. Not only this, appellant-plaintiff decided not to challenge the order of rejection of the representation, he could not have filed civil suit claiming the said benefit of remuneration and that too in the year 1988 as cause of action accrued to the appellant-plaintiff

in December 1980 whereas, the civil suit was filed in the year 1988.

8. Learned counsel for the appellant-plaintiff has not been able to project as to how, the civil suit which was filed only in the year 1988 claiming the benefit of higher wages for the period from 01.01.1981 to 04.12.1982 in the absence of any challenge to the order dated 20.12.1980 as well as dated 30.10.1987 can be treated to be within limitation.

9. Learned counsel for the appellant-plaintiff submits that as per the settled principle of law settled by the Hon'ble Supreme Court of India in **Civil Appeal No.1549-2011, titled as State of Punjab and another vs. Dharam Pal, decided on 05.09.2017**, once an employee has worked on a higher post, even if, any stipulation has been mentioned in the order that he will not be granted remuneration, will not debar the employee concerned to claim the benefit of officiating post.

10. In the facts and circumstances of the present case, judgment in the case of **Dharm Pal (supra)** is not applicable as the conditions incorporated in the said order, were not challenged by the appellant-plaintiff within a prescribed period of three years, which remedy was fully available with the appellant-plaintiff. Even rejection of the representation filed by the appellant-plaintiff, has not been challenged by him hence, the benefit of the judgment in **Dharam Pal (supra)** cannot be extended to the appellant-plaintiff.

11. No other argument has been raised.

12. Keeping in view the facts and circumstances recorded hereinbefore as the learned counsel for the appellant-plaintiff has not been able to point out any perversity in the judgment and decree of the Courts

below, the present regular second appeal is dismissed.

13. Civil miscellaneous application pending, if any, is disposed of.

April 16, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No