

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

RSA-3287-1998 (O&M)

Date of Decision: 09.02.2024

PUNJAB MANDI BOARD AND ANOTHER

...Petitioners

Vs.

KULDIP SINGH AND OTHERS

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Alka Chatrath, Advocate and
 Ms. Neha Singh, Advocate
 for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana.

Ms. Kavita Arora, Advocate for
Mr. S.C. Pathela, Advocate
for the private respondents.

HARSIMRAN SINGH SETHI, J. (Oral)

In the present petition, the challenge is to the judgment and decree of the Lower Appellate Court dated 30.04.1998 by which, the judgment and decree of the trial Court dated 29.03.1993 has been set aside and the suit filed by the respondent/plaintiff has been allowed.

2. It may be noticed that the respondent/plaintiff initially joined as a Publicity Assistant on 24.04.1976 on ad-hoc basis for a period of 89 days thereafter, he was regularly selected on the said post along with the others on 20.07.1976 and was posted at Bathinda. A seniority list was issued by the Department in the cadre concerned in the year 1982 wherein the respondent/plaintiff was shown at serial No. 6 and the defendant No.4 namely Ajit Singh was shown at serial No.1.

3. On the basis of the said seniority list, the further promotions were affected and defendant No.4 was promoted as Secretary, Market Committee. Thereafter, the respondent/plaintiff filed a civil suit in the year 1989 challenging the seniority list which was issued in the year 1982 and also the promotion of defendant No.4 to the post of Secretary, Market Committee.

4. The trial Court, keeping in view the facts and evidence which came on record dismissed the suit being time barred, which judgment and decree of the trial Court dated 29.03.1993 was challenged by respondent/plaintiff by filing the appeal before the Lower Appellate Court.

5. The Lower Appellate Court allowed the appeal filed by the respondent/plaintiff vide judgment and decree dated 30.04.1998 and held that not only the suit was within limitation but the respondent/plaintiff was required to be treated at serial No.1 in the seniority list over and above defendant No.4 and it was directed to promote the respondent/plaintiff as a Secretary, Market Committee with all consequential benefits and the arrears of salary were limited to the period of 03 years and 02 months prior to the filing of the civil suit. Feeling aggrieved by the judgment and decree of the Lower Appellate Court dated 30.04.1998, the present regular second appeal has been filed.

6. Learned counsel for the appellant argues that it a conceded position that the seniority list in the cadre wherein the respondent/plaintiff was shown at serial No.6 and defendant No.4 was shown at serial No.1 was issued in the year 1982 and in case the respondent/plaintiff was aggrieved against the same, the said seniority list was required to be challenged within a

period of 03 years of the issuance of the same but as the civil suit was filed after a period of 07 years from the issuance of said seniority list, the suit was time barred and was rightly dismissed by the trial Court.

7. Learned counsel for the appellant further submits that the reason given to upset the said finding of the trial Court is that the cause of action will only arise when the defendant No.4 was promoted to the post of Secretary, Market Committee, even if, the said seniority list was framed in the year 1982 is bad as the seniority list once framed describes seniority position and the promotion is only a consequential benefit of the said seniority position hence, the respondent/plaintiff was required to challenge the said seniority list within the limitation period hence, the findings recorded by the Lower Appellate Court are incorrect.

8. Learned counsel for the respondent/plaintiff submits that the seniority position depicted in the seniority list issued in the year 1982 affected the respondent/plaintiff only when defendant No.4 namely Ajit Singh was promoted to the post of Secretary, Market Committee and the suit was filed within a period of 03 years of the said promotion and the same has rightly been held to be within limitation by the Lower Appellate Court.

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

10. In the present appeal, the facts which have been recorded hereinabove have been conceded by the respective parties. Once, the seniority list was framed in the year 1982 wherein respondent/plaintiff was shown at serial No.6 and defendant No.4 was shown at serial No.1 in the particular cadre, the cause of action arose to the respondent/plaintiff in the

year 1982. Merely, that the said seniority list was brought in operation at the time of promotion of defendant No.4, will not give a cause of action to the respondent/plaintiff so as to challenge the said seniority list. The promotion of defendant No.4 was done on the basis of seniority which was fixed in the year 1982, hence, the challenge to the said seniority list by the respondent/plaintiff in the year 1989 was clearly beyond the limitation prescribed to challenge the particular action/order. Hence, the findings being recorded by the Lower Appellate Court that the seniority list affected the respondent/plaintiff when defendant No.4 was further promoted as Secretary, Market Committee cannot be accepted as the promotions were based on the basis of the seniority list which attained finality in the year 1982. The findings which have been recorded by the Lower Appellate Court to treat the suit filed by the respondent/plaintiff within the limitation are incorrect and cannot be accepted being perverse.

11. Keeping in view the above, the appeal is allowed, the judgment and decree of the Lower Appellate Court dated 30.04.1998 is set aside and judgment and decree of the trial Court dated 29.03.1993 is restored and the civil suit filed by the respondent/plaintiff is dismissed.

12. Pending applications, if any, also stands disposed of.

(HARSIMRAN SINGH SETHI)
(JUDGE)

09.02.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No