

CM-5109-C-2024 ;
CM-5110-C-2024 in/and
RSA-1425-1999

2024:PHHC:070447



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(101) CM-5109-C-2024 ;
CM-5110-C-2024 in/and
RSA-1425-1999
Date of Decision : 18.05.2024

D.P. Selhi (since deceased) through his LR
...Appellant

Versus

State of Punjab
...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ashwani Talwar, Advocate with
Mr. Dishant Jindal, Advocate with
Mr. Ishaan Vashisth, Advocate for the appellant.

Mr. Rohit Ahuja, Deputy Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

CM-5109-C-2024

Present application has been filed for recalling the order dated 19.04.2024, by which, the present appeal was dismissed for non-prosecution.

Notice of the application to the counsel opposite.

Mr. Rohit Ahuja, learned Deputy Advocate General, Punjab, who is present in Court, accepts notice on behalf of the respondents. He

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raises no objection for the grant of prayer as raised in the present application.

Keeping in view the averments made in the application, which is duly supported by an affidavit, the same is allowed. The order dated 19.04.2024 is recalled and the appeal is restored to its original number and status.

CM-5110-C-2024

Present application has been filed for impleading legal representative of the appellant, who unfortunately died on 27.02.2023, during the pendency of the present appeal.

Notice of the application to learned counsel for the respondents.

Mr. Rohit Ahuja, learned Deputy Advocate General, Punjab, who is present in Court, accepts notice on behalf of the respondents. He raises no objection for the grant of prayer as raised in the present application.

Keeping in view the averments made in the application, which are duly supported by an affidavit, present application is allowed. The sole legal heir of the appellant, the detail of whom is given in para 3 of the application, is allowed to be impleaded in the present appeal and the amended memo of parties attached with the present application is taken on record.

CM stands allowed.



RSA-1425-1999

1. In the present appeal, the challenge is to the judgment and decree of the lower appellate court dated 12.10.1998 by which the judgment and decree of the trial court dated 29.03.1995 has been set-aside and the suit filed by the appellant-plaintiff has been dismissed.

2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

3. The appellant-plaintiff was working as a Sub Divisional Officer with the respondent-State and as per the recommendations of the Pay Commission, which became effective from 01.01.1978, the pay scales were revised and selection grade was granted to certain posts. The appellant-plaintiff claimed the benefit of selection grade in the cadre of Sub Divisional Officer w.e.f. 01.10.1978. The said claim was rejected by the department in the year 1981. The appellant-plaintiff continued working with the department without raising any grievance and thereafter, he promoted as Executive Engineer on 18.11.1982 and he continued working on the said post and ultimately retired from service on 30.11.1988 on attaining the age of superannuation.

4. After retirement, he again made a representation for the grant of the benefit of selection grade, which was granted to him in October, 1990 w.e.f. 03.05.1981. Thereafter, the appellant-plaintiff filed a civil suit claiming the benefit of revised pay scale in the selection grade w.e.f. 1.1.1978.



5. Keeping in view the evidence and facts, which had come on record, the civil suit filed by the appellant-plaintiff was allowed by the trial court vide judgment and decree dated 29.03.1995 and a direction was given to grant the appellant-plaintiff the benefit of selection grade w.e.f. 01.01.1978 along with the consequential benefits.

6. Feeling aggrieved against the said decision of the trial court dated 29.03.1995 by which the suit filed by the appellant-plaintiff was allowed, two appeals were preferred, one by the appellant-plaintiff claiming the interest on the arrears and the second appeal was filed by the State challenging the release of selection grade w.e.f. 01.01.1978.

7. The appeal filed by the State was allowed holding that the suit filed by the appellant-plaintiff was time barred as, his claim had already been rejected in the year 1981 on the ground that the cause of action accrued to the appellant-plaintiff in the year 1978, hence, the suit filed by the appellant-plaintiff was time barred. The judgment and decree of the lower appellate court dated 12.10.1998 is under challenge in the present regular second appeal.

8. Learned counsel for the appellant-plaintiff submits that though the cause of action had accrued to the appellant-plaintiff upon the revision of the pay scale in the year 1978 but once, after the retirement, the appellant has already been granted the benefit of selection grade from the year 1981, the appellant-plaintiff becomes entitled for the grant of said benefit w.e.f. 1978 and the cause of action has to be taken into



account from 30.10.1990 i.e. when, the benefit of selection grade was given to the appellant-plaintiff w.e.f. 03.05.1981.

9. Learned State counsel, on the other hand, submits that the cause of action accrued to the appellant-plaintiff in the year 1978 but no grievance was raised by him and ultimately, in the year 1988, the appellant-plaintiff retired and it is only thereafter, the benefit of selection grade was given w.e.f. 1981 keeping in view the representation filed when the appellant-plaintiff completed 15 years of service as required under the Instructions dated 14.01.1981, which has come on record as Ex. D-1.

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

11. It is a settled principle of law that the claim regarding selection grade in pursuance to the revision of pay scale cannot be treated as a recurring cause of action. Once, the appellant-plaintiff did not agitate the grant of the said benefit while in service and the appellant-plaintiff remained in service for a period of 10 years after the revision of the pay scale from 01.01.1978, it cannot be said that after the retirement, the appellant-plaintiff can file the civil suit claiming the said benefit.

12. As per the judgment of the Hon'ble Supreme Court of India in Civil Appeal Nos. 5847, 5854 and 5853 of 2005 titled as ***State of Punjab and another Vs. Balkaran Singh***, decided on 18.10.2006, the limitation qua the pay scale starts from the time when the right to sue first



accrued to the plaintiff. The relevant paragraph 15 of the said judgment is as under :-

“15. We shall first deal with the first two suits relating to the declaration that the plaintiffs therein are entitled to be placed in the revised scale of pay of Rs.1200-1850/-. The suits filed are for declaration that the order or endorsement dated 13.3.1980 was illegal and void. The suits were filed more than 12 years after the order fixing the revised scale of pay at Rs.940-1850/-. A suit for declaration is governed by [Article 58](#) of the [Limitation Act](#) and the period is three years and the terminus au quo is "when the right to sue first accrues".(emphasis supplied) Clearly, the right to seek the relief of declaration that they are entitled to revised scale of pay of Rs.1200-1850/-, accrued to the plaintiffs on 13.3.1980, when the endorsement in that behalf was made by the Director of Agricultural Services and the plaintiffs were denied revised pay at Rs.1200-1850/- and were paid only at Rs.940-1850/-. It was not the mere making of an order, but an action that had immediate impact on the right of the plaintiffs to recover a higher salary as per their claim. The cause of action thus clearly arose for the first time. Thus the suit for declaration was clearly barred by limitation going by [Article 58](#) of the [Limitation Act](#). The fact that some other officer had been given a decree for the enhanced revised scale, does not furnish the plaintiffs in the first two suits with a fresh cause of action. It is well settled that the time does not stop to run once it has started to run. Therefore, the reliance placed on the decree in Civil Suit No. 461 of 1991 had absolutely no relevance on this question. Strictly speaking, Civil Suit No.



461 of 1991 also ought not to have been decreed since that suit was clearly barred by limitation, since the order sought to be challenged in that suit of 1991 was also the order dated 13.3.1980. But in view of the decree passed therein, it is not for us now to go into the correctness or otherwise of the decision rendered therein. Suffice it to say that the said decision cannot give the plaintiffs a fresh cause of action. The time started to run when the right to sue first accrued to the plaintiff and that first accrual was clearly on 13.3.1980 and on expiry of 3 years therefrom, the suit for declaration became barred.”

13. In the present case, it is a conceded position that the right to sue accrued in favour of the appellant-plaintiff in the year 1978, hence, the suit filed in the year 1994, is clearly time barred.

14. Further, with regard to the argument of the learned counsel for the appellant-plaintiff that once, the respondents decided the claim of the appellant-plaintiff in October, 1990 and granted the benefit of selection grade w.e.f. 03.05.1981, the right accrued to the appellant-plaintiff in the year 1990 only, it may be noticed that as per the law of limitation, any acknowledgment of a right after the limitation expires cannot be taken into account. Further, the order passed in October, 1990 granting the benefit of selection grade from the year 1981, has never been impugned. That being so, the claim that the limitation will start from October, 1990 keeping in view the facts and circumstances of the present

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case coupled with the decision of the Hon’ble Supreme Court of India in *Balkaran Singh’s case (supra)*, cannot be accepted.

15. Keeping in view the above, as no perversity in the judgment and decree of the lower appellate court has been pointed out, no interference is called for by this Court in the present regular second appeal.

16. Dismissed.

May 18, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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