

RSA-4759 of 2016 (O&M)

2024:PHHC:035027

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

RSA-4759 of 2016 (O&M)

Date of decision: 07.03.2024

Mukhtiar Singh

.....Appellant

Versus

The Pepsu Road Transport Corporation and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Puneet Kumar Bansal, Advocate,
for the appellant.

Mr. Harsh Chopra, Advocate,
for the respondents.

NAMIT KUMAR, J.

1. This regular second appeal is directed against the judgment and decree dated 20.03.2014, passed by the Court of learned Civil Judge (Junior Division), Ferozepur, whereby suit filed by the plaintiff-appellant for declaration was dismissed as well as against the judgment and decree dated 10.05.2016 passed by the Court of learned Additional District Judge, Ferozepur, whereby appeal filed by the appellant has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Brief facts of the case are that plaintiff filed a suit for declaration pleading therein that he is a regular and confirmed employee of the respondent-Corporation. He joined as a Conductor on 04.02.1976 and since then he has been working as such.

All his A.C.Rs. are good and he was never conveyed any adverse remarks. He is entitled to the protection and benefits of service rules, instructions, provisions of Constitution of India and principles of natural justice. Defendants issued instructions and revised pay scales as applicable with effect from 01.01.1996, whereby every employee including conductors are entitled to the benefit of one proficiency step up increment each time on completion of 8 years and 18 years of service. Further instructions/revised pay scale were also issued, as applicable with effect from 01.01.1996, whereby every employee including conductors are entitled to the benefit of proficiency step up/Assured Career Progression Scheme each time on completion of 8 years, 16 years, 24 years and 32 years service. Plaintiff completed 8 years service on 03.02.1984 and 18 years service on 03.02.1994 and he also completed 16 years service on 03.02.1992 and 24 years service on 03.02.2000. He became entitled to 8 years and 18 years proficiency step up benefit with effect from 01.01.1986 and 04.02.1994 and he became entitled to 24 years proficiency step up increment/A.C.P Scheme benefit with effect from 04.02.2000. Defendants passed order No.709 dated 27.08.1992, order No. 1726 dated 13.02.1989, order No.931 dated 10.10.1988, order No.5 dated 14.01.1991, order No.193 dated 06.05.1980 and order No.513 dated 05.07.1979, whereby 2, 3, 2, 2, 1 and 1 increments of plaintiff were ordered to be stopped/withheld with cumulative effect. Said orders were not conveyed to plaintiff and learnt about the same only 15 days back when he was orally told about the same. Plaintiff claimed all the aforesaid orders to be wrong, illegal,

against service rules & regulations, instructions of defendant-corporation, instructions of Punjab Government, against the provisions of Civil Services Rules, Constitution of India and Principles of natural justice, arbitrary and are null and void, inoperative qua the rights of plaintiff.

3. On notice, defendants appeared and filed written statement contesting the suit. Preliminary objections regarding maintainability of the suit, suit being barred by limitation, plaintiff being estopped by his own act and conduct from filing the suit, territorial jurisdiction of Civil Court, suit being barred by *res judicata* and barred under Order 2 Rule 2 CPC, were taken. While replying on merits, it was contended that in Civil Suit No.859 of 03.11.2003, filed by plaintiff and was decided vide judgment dated 16.09.2005, passed by the learned Civil Judge (Senior Division), Faridkot, he has already availed of all the opportunities under law. He has not disclosed this fact in this case, so, he is guilty of concealment of facts. All the orders were duly conveyed to him and he has already availed legal channels. After availing remedy, suit has become barred under Order 2 Rule 2 CPC. Denying other averments of plaint, prayer for dismissal of the suit was made.

4. Replication to the written statement was filed. From the pleadings of parties following issues were framed by learned trial Court:

1. Whether the plaintiff is entitled for declaration as prayed for? OPP
2. Whether the suit is time barred? OPD

3. Whether this suit is not maintainable in its present form? OPD
 4. Whether this Court has no jurisdiction to try this suit? OPD
 5. Whether plaintiff has not come to the Court with clean hands? OPD
 6. Whether this suit is barred by the principle of Resjudicata? OPD
 7. Whether this suit is barred under Order 2 Rule 2 CPC? OPD
 8. Relief
5. Parties led oral as well as documentary evidence in support of their respective contentions.
6. After hearing arguments and appreciating evidence on record, trial Court dismissed the suit of plaintiff vide judgment and decree dated 20.03.2014.
7. Aggrieved against the judgment and decree of the trial Court, plaintiff preferred an appeal before the lower appellate Court, which has also been dismissed vide judgment and decree dated 10.05.2016.
8. Learned counsel for the appellant contended that judgments and decrees passed by both the Courts below are based on conjectures and surmises. He further contended that Courts below have wrongly observed that suit of the plaintiff-appellant was hit by the provisions of Order 2 Rule 2 CPC. The action of the trial Court in adjudicating the issues No.6 and 7 as preliminary issues is wrong and findings thereof are also wrong and not sustainable in the eyes of law.

He further contended that relief claimed by the plaintiff in the present

suit was never decided in the earlier suit, thus, the same was not barred by the principles of *res judicata*. Learned counsel contended that judgments and decrees passed by the Courts below being unsustainable in the eyes of law are liable to be set aside.

9. *Per contra*, learned counsel for the respondents contended that judgments and decrees passed by the Courts below are legal and valid. He contended that suit of the plaintiff has rightly been dismissed and present appeal is also liable to be dismissed.

10. I have heard learned counsel for the parties and perused the record.

11. Plaintiff filed suit seeking benefit of proficiency step up on completion of 8 years, 18 years, 16 years and 24 years service and further claimed that orders dated 27.08.1992, 13.02.1989, 10.10.1988, 01.04.1981, 06.05.1980 and 05.07.1979 are illegal, whereby his increments were ordered to be stopped/withheld with cumulative effect. Perusal of the record shows that plaintiff had earlier filed civil suit bearing No.859 dated 03.11.2003 titled as 'Mukhtiar Singh Vs. Pepsu Road Transport Corporation, Faridkot etc.' In that suit he had challenged the legality and validity of orders dated 06.05.1980, 10.10.1988, 13.02.1989 and 27.08.1992, which was dismissed vide judgment dated 16.09.2005 (Ex.D1) by the Court of learned Civil Judge (Senior Division), Faridkot. Besides assailing aforementioned four orders in the present suit, plaintiff assailed two more orders dated 01.04.1981 and 05.07.1979. During pendency of suit, an application was moved by plaintiff to withdraw his claim of three orders dated

27.08.1992, 13.02.1989 and 06.05.1980. In the said application, plaintiff stated that he had inadvertently claimed relief regarding said orders in the present suit. So, if his claim regarding three orders is withdrawn, present suit pertains to remaining three orders dated 10.10.1988, 01.04.1981 and 05.07.1979. Present suit challenging orders dated 10.10.1988, 01.04.1981 and 05.07.1979 was filed on 21.11.2007 by the plaintiff, whereas limitation to challenge the said orders was three years. Thus, suit assailing the said orders after expiry of period of three years was barred by limitation. The lower appellate Court has rightly observed that earlier suit No. 859 was filed by the plaintiff on 03.11.2003 at Faridkot. All the aforementioned three orders had already been passed. Plaintiff was required to challenge those three orders also while filing earlier suit on 03.11.2003, while challenging other orders. He was required to include whole claim and in case of his failure, he cannot proceed regarding same being barred under 2 Rule 2 CPC. No reason has been assigned as to why these three orders were not challenged in the earlier suit and as to how cause of action had not accrued at the time of filing of earlier suit and had now accrued at the time of filing of this suit. Plaintiff has not only concealed the decision in earlier suit Ex.D1, but also made mis-statement in para No.10 of his plaint that no suit between same parties or between the parties under whom they or any of them claim litigating on the same ground, has been previously instituted or decided by a Court of competent jurisdiction or limited jurisdiction. Therefore, plaintiff is guilty of concealment and mis-statement. As the suit of the plaintiff was based

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upon false averments so the trial Court had chosen to not hear the plaintiff on merits and decided the suit against the plaintiff by deciding issues No.6 and 7 as preliminary issues. The said finding had been upheld by the learned lower Appellate Court.

12. Concurrent findings have been recorded by both the Courts below and learned counsel for the appellant has failed to show that the same are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

13. No question of law, muchless substantial question of law arises for consideration in the present appeal. No other point has been urged.

14. In view of the above, present appeal is dismissed with costs of Rs.25,000/- to be deposited by the appellant with the Punjab State Legal Services Authority, within two months from the date of receipt of certified copy of this order. On failure of deposit of aforesaid costs by the appellant, the Registrar General shall issue necessary directions to the concerned Collector of the District to recover the same as arrears of land revenue and to remit the same to the above noted authority.

15. Pending application(s), if any, stand disposed of accordingly.

07.03.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No