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

(219)

[RSA-3091-2014](#)**Date of decision:- 05.08.2024****Jagdish Chander****... Appellant****Versus****State of Haryana and another****... Respondents****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. Ashutosh Kaushik, Advocate
for the appellant.

Mr. Aman Bahri, Addl. A.G., Haryana
for the respondents.

SUVIR SEHGAL, J. (ORAL)

1. Plaintiff-appellant is in second appeal before this Court challenging the judgment and decree passed by the First Appellate Court, whereby the judgment and decree passed by the Trial Court was reversed and the suit was dismissed.

2. Plead case of the plaintiff is that he joined as a Sweeper with the defendants on 04.12.1978 on daily wages, however, his services were terminated in 1984. Vide award dated 31.10.1998 passed by the Labour Court, Ambala, he was ordered to be reinstated with continuity of service along with back wages. He was taken back in service on 31.03.1989 and was given a pay scale of Rs.750-940/- + Rs.65/- as Special Pay. Services of his juniors were regularized ignoring his claim under the Regularization Policy of the Government of Haryana dated 27.05.1993, despite the fact



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that posts were lying vacant. He claimed that he was entitled to ACP in the scale w.e.f. 01.04.2003, but it was granted a year later. Services rendered by him as a daily wager were not being counted. He had filed the suit for declaration and mandatory injunction *inter-alia* claiming the following reliefs:-

“I) To regularize of service of the plaintiff w.e.f. 31.03.1993 as per government policy dated 27.05.1993;

II) To count/taken into consideration the services rendered by the plaintiff during the period w.e.f. 04.12.1978 to 21.03.1994 in the capacity of daily wages/adhoc under the defendants, followed by regular service, for the purpose of granting the ACP scales, pensionary benefits including gratuity, leave encashment, pension etc:

III) To grant the benefits of ACP-I in the pay scale of Rs. 2650-4000/- w.e.f. 01.04.2003 with all arrears accruing thereto, including difference of pay, arrears, bonus, increments, allowances, seniority, promotion and accordingly proper fixation of pay w.e.f. 01.01.2006 in the revised pay scales:

IV) To grant all other legal and consequential benefits, accruing by virtue of regularization of service w.e.f. 31.03.1993 and granting the ACPI w.e.f. 01.04.2003.

V) To pay entire arrears along with at the rate of 18% per annum.”

3. Upon notice, written statement was filed by the defendants contesting the suit on various grounds. It was submitted that the plaintiff was regularized and all the benefits permissible to him as per the rules were granted to him by considering his date of regularization as 21.03.1994. Other claims, including that of regular pay scale, was denied as the plaintiff was working on a daily wage basis. It was specifically denied that he was



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discriminated against qua his juniors. Plaintiff did not file any replication and issues were framed on the basis of the pleadings of the parties, who led evidence in support of their case. After hearing the counsel for the parties, Trial Court by judgment dated 07.11.2013, partly decreed the suit by directing the defendants to regularize the service of the plaintiff w.e.f. 31.03.1993 and to count the service rendered by him as a daily wagers/adhoc for the purpose of grant of ACP scales. Defendants filed an appeal, which was accepted by the learned Additional District Judge, Kurukshetra by judgment dated 18.01.2014, resulting in the institution of the second appeal by the plaintiff-appellant.

4. Counsel for the appellant urges that the First Appellate Court has erred in setting aside the judgment and decree passed by the Trial Court on the ground that the suit filed by the plaintiff had been filed beyond the period of limitation. He submits that the Appellate Court failed to appreciate that some of the reliefs claimed by the plaintiff gave him a recurring cause of action and it could not be said that the limitation period had expired. He has placed reliance upon the judgment of the Supreme Court in ***Union of India and others Versus Tarsem Singh, (2008) 8 SCC 648*** as well as judgment of a Coordinate Bench of this Court in ***RSA-2177-2015*** titled as ***Jagir Singh Versus Haryana Vidyut Prasaran Nigam Ltd. and others***, decided on 18.04.2017.

5. On the contrary, learned State counsel has opposed the appeal by placing reliance upon the judgment of the Supreme Court in ***State of Punjab and another Versus Balkaran Singh, (2006) 12 SCC 709*** to



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contend that the suit for declaration has to be filed within a period of three years from the date the cause of action accrues.

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

7. In **Tarsem Singh's** case (supra), Supreme Court has held as under:-

“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. Insofar as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a

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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. This Court in ***Sohan Singh Versus State of Punjab, 2006 (4) S.C.T. 452*** has held that a claim for pension cannot be rejected on the ground 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 monthly, when he is not paid the pension as per his entitlement.

9. Coming to the facts of the case in hand, a perusal of the reliefs claimed by the plaintiff, reproduced in para 2 above, show that besides claiming regularization with consequential benefits and ACP scales, plaintiff has also sought a decree for counting the service rendered by him from 1978 to 1994 for the purposes of pensionary benefits, gratuity, leave encashment etc. As one of the reliefs claimed by him pertains to pension, which has been held to be a continuing cause of action, the suit of the plaintiff could not had been dismissed on ground of limitation. It is true that although limitation may not have been set up as a defence, by virtue of Section 3 of the Limitation Act, 1963, it is the duty of the Court to dismiss any suit instituted after the prescribed period of limitation, but the Court cannot lose sight of the relief claimed in the suit. As one of the reliefs claimed pertains to a recurring cause of action, the learned Additional District Judge erred in coming to the conclusion that the suit was barred by limitation. ***Balkaran Singh's*** case (supra), upon which reliance has been placed by the State counsel, has been distinguished by this Court in ***Jagir***



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Singh's case (supra) by holding that in *Balkaran Singh's* case (supra), the date of cause of action was pre-determined and the adverse order was not challenged in legal proceedings within the prescribed period of limitation. Therefore, the findings recorded by the Lower Appellate Court cannot be sustained.

10. For the foregoing reasons, judgment and decree passed by the First Appellate Court is reversed and the matter is remitted to the learned District Judge, Kurukshetra for decision afresh in accordance with law, after hearing the counsel for the parties.

11. Appeal is disposed of.

12. Parties are directed to appear before the learned District Judge, Kurukshetra on 03.10.2024, at 10:00 A.M. Learned District Judge may decide the matter himself or assign it to a Court of competent jurisdiction.

(SUVIR SEHGAL)
JUDGE

05.08.2024
Kamal

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