



*RSA-1293-2017(O&M) and
RSA-1902-2017(O&M)*

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

114 RSA-1293-2017(O&M)
Reserved on : 29.08.2024
Date of decision: 09.09.2024

Gajanand Jain ... Appellant

Vs.

State of Haryana and others
... Respondents

114-2 ***RSA-1902-2017 (O&M)***

Gajanand Jain ... Appellant

Vs.

State of Haryana and others
... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Tejpal Singh Dhull, Advocate for the appellant.
Mr. Aman Bahri, Addl. A.G. Haryana.

SUVIR SEHGAL, J.

1. This order shall dispose of both the above noted appeals as they involve common question of law and facts.
2. For the sake of convenience factual position is being taken from RSA-1293-2017.



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3. Plaintiff-appellant is in second appeal before this Court challenging the judgment and decree passed by the lower Appellate Court whereby the judgment and decree passed by the trial Court was reversed and the suit filed by him was dismissed.

4. Factual background leading to the filing of this appeal is that the plaintiff-appellant was appointed as a Science-cum-Mathematics Master for a period of six months w.e.f. 02.06.1971 and his services were regularized on 13.01.1973. He was promoted as a School Cadre Lecturer on 10.01.1987 and as a Principal (School Cadre) on 31.10.2002. He retired on attaining the age of superannuation on 31.07.2008 after completing 37 years of satisfactory service. Claiming that he was entitled to the Assured Career Progression (ACP) benefits during his service tenure, he filed a suit for declaration on 16.09.2013. Upon being served, defendants contested the suit by raising various preliminary objections including that of limitation. It was submitted that the plaintiff had been granted financial upgradation during his service tenure, which fact he has suppressed. It was also submitted that the plaintiff never submitted any representation during his service tenure claiming ACP benefit. Replication was filed by the plaintiff and on the basis of the pleadings of the parties, trial Court framed the issues. After the parties led evidence and they were heard, the trial Court vide judgment dated 13.08.2015 decreed the suit and held that the plaintiff-appellant was entitled to the second ACP w.e.f. 01.01.1996 with consequential



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benefits and the defendants were directed to consider his case by passing a speaking order. The defendants filed an appeal before the lower Appellate Court challenging the judgment and decree of the trial Court, whereas, plaintiff filed cross-objections claiming that he was entitled to interest on the arrears to be paid to him. By judgment dated 21.11.2016, which has been assailed herein, learned District Judge, Narnaul, reversed the judgment and decree of the trial Court and accepted the appeal filed by the defendants. Cross objections filed by the plaintiff-appellant were dismissed, resulting in the filing of the above noted two appeals at the hands of the plaintiff-appellant.

5. Placing reliance upon the judgments of the Supreme Court in **Union of India Versus Tarsem Singh, 2008 (8) SCC 648,** counsel for the appellant has argued that where a claim has been filed belatedly, the relief of recovery of arrears can be restricted to 38 months prior to the institution of the litigation. He has also placed reliance upon the judgment of this Court in **Jagir Singh Versus Haryana Vidyut Prasaran Nigam Ltd and others (RSA-2177-2015, decided on 18.04.2017)** as also **Jagdish Chander Versus State of Haryana and another (RSA-3091-2014, decided on 05.08.2024),** to submit that the first Appellate Court has erred in dismissing the suit on account of limitation as the plaintiff had claimed consequential relief including pension, which is a recurring cause of action. Another argument has been raised by him that plaintiff's colleagues,



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Gopal and Surender, have been granted the benefit of second ACP and plaintiff is similarly placed.

6. While supporting the impugned judgment and decree, State counsel has argued that the plaintiff is not entitled to the ACP benefits under the rules. He has relied upon the judgment of the Supreme Court in **State of Punjab and another V. Balkaran Singh, (2006) 12 Supreme Court Cases 709** to submit that the suit was barred by limitation.

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

8. In **Balkaran Singh's** case (supra), Supreme Court has held 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



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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.”



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9. The Hon'ble Supreme Court has held that the right to claim revised pay first accrues on the day when the claim for higher pay is declined and even if another officer has been given a revised pay scale, that would not give him a fresh cause of action. Adverting to the facts of the present case, it is evident that the plaintiff was regularized as Mathematics Master in January, 1973 and he completed 20 years of regular service in 1993. He claims that he has not been granted the ACP benefit on completion of 20 years of service. This right accrued to him in 1993. Plaintiff could not lead any evidence to show that during his entire service tenure till his retirement in the year 2008, he had ever agitated the claim for grant of ACP. He preferred to institute the suit for declaration almost 5 years after his retirement, which is clearly barred by limitation under Article 58 of the Limitation Act, 1963. The claim to higher salary, is a right, which subsists during the service tenure of an employee and can be exercised by him at time of each payment of salary so long as the employee is in service, however, after retirement and that too after almost five years, the plaintiff-appellant cannot assert this right. Mere fact that two of his counter-parts, were granted financial upgradation, would not furnish a fresh cause of action as has been held by the Supreme Court in **Balkaran Singh's** case (supra). In so far as the judgments, relied upon by the counsel for the plaintiff-appellant are concerned, the judgments deal with the situation where besides claiming ACP benefits, the plaintiff had claimed other reliefs also and noticing this aspect, the



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Courts had passed orders for remand or for grant of benefit by restricting the claim to 38 months. These judgments do not advance the case of the appellant.

10. This Court, therefore, does not find any infirmity or illegality in the judgment and decree passed by the lower Appellate Court, which is affirmed. Appeal being devoid of merit is dismissed.

11. As the main case has been decided, pending applications are disposed of.

09.09.2024
pooja saini

(SUVIR SEHGAL)
JUDGE

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