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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 15th December, 2023

Date of Decision: 25th January, 2024

+ RSA 127/2023, CM APPLs. 35803/2023 & 35804/2023

INDRAPRASTHA POWER GENERATION COMPANY LIMITED
(IPGCL) Appellant

Through: Mr. S. Wasim A. Qadri, Sr. Adv. with
Mr. Saeed Qadri and Mr. Tarique
Farooqui, Advs.

versus

SHRI RAGHUBIR SINGH Respondent

Through: Mr. N. K. Jha, Advocate alongwith
Respondent in person

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. This second appeal has been filed under Section 100 read with Order XLI of the Code of Civil Procedure, 1908 ('CPC') impugning the final judgment dated 31.10.2022 passed by the Addl. Sr. Civil Judge, Central District, Tis Hazari Courts, Delhi ('First Appellate Court') in RCA 1334/2016, titled as **IPGCL v. Raghubir Singh**, whereby the First Appellate Court has dismissed the appeal and upheld the judgment dated 11.08.2016 passed by Civil Judge-1, Central District, Tis Hazari Courts, Delhi ('Trial Court') in CS No. 596050/2016 titled as **Raghubir Singh v. IPGCL**.



1.1. For the sake of convenience, the parties are being referred to as per their rank and status before the Trial Court. The Appellant is being referred to as the defendant and the Respondent is being referred to as plaintiff.

1.2. The plaintiff filed a suit (CS No.:164/2011) for declaration and mandatory injunction. The plaint was inter-alia seeking a declaration to the effect that plaintiff is senior to Sh. V.K. Chaudhary (the now deleted defendant no.2) for the post of Assistant Accountant, Section Officer (Accounts) and Assistant Manager (Finance). The relief of mandatory injunction sought was to the effect that defendant be directed to consider plaintiff as appointed/promoted for the post of Assistant Accountant, Section Officer (Accounts) and Assistant Manager (Finance) prior to the date of the appointment of Sh. V.K. Chaudhary and to grant all the service benefits to the plaintiff of the above said posts from an anterior date.

1.3. The Trial Court vide the judgment dated 11.08.2016 decreed the suit filed by the plaintiff. The Trial Court held that the plaintiff is entitled to the declaration that he was senior to Sh. V.K. Chaudhary. The Court further directed the defendant to convene a review Departmental Promotion Committee ('DPC') and the plaintiff be given appropriate seniority. Lastly, the Trial Court directed that plaintiff is entitled to enhanced pensionary benefits in accordance with recommendations of the review DPC. The said findings of the Trial Court have been upheld by the First Appellate Court by its impugned order dated 31.10.2022.

Brief Facts

1.4. The plaintiff was appointed as permanent junior clerk on 22.01.1974 vide employment no. 15951. Whilst, Sh. V.K. Chaudhary was appointed as a senior clerk on 13.05.1989 on regular basis.



1.5. In 1988, there were 171 posts of the Assistant Accountant which were required to be filled up according to the Recruitment and Promotion Regulations of 1978 ('RPR 1978'). In 1988 Sh. U.B. Singh filed a civil suit no. 523/1988 seeking permanent injunction against defendant from filling up of vacancy in contravention to the RPR 1978. The said suit was disposed of on 19.05.1989 with the direction to defendant to fill up 171 posts of Assistant Accountants within six (6) months in accordance with RPR 1978. The departmental competitive examination for the said 171 vacant posts of Assistant Accountant was held on 26.12.1993, but on 15.02.1994 result of only 79 candidates was declared.

1.6. Against the said result two (2) writ petitions (WP(C) 577/1993 and WP(C) 2356/1994) were filed by the employees and during the pendency of the said petitions the defendant amended the RPR in 1995 ('amended RPR 1995'). As per the amended RPR 1995, 80% of the posts of Assistant Accountant were to be filled by promotion on the basis of seniority and 20% were to be filled by examination. In the said writ petitions the High Court held that the result of the 79 candidates declared is valid and the remaining vacancies have to be filled up as per the amended RPR 1995. An SLP No. 12069 and 13322-23 of 1997, titled as **B.L. Gupta & Ors. v. MCD**¹ was filed against the said judgment of the High Court. The Supreme Court directed the defendant to declare the result of the remaining 92 candidates out of 171 vide orders dated 05.09.1997 and 13.10.1997. The Supreme Court directed that the vacancies which had arisen prior to the amendment of recruitment rules in 1995 should be filled in accordance with unamended

¹ 1998 (7) SC 225.



RPR 1978. In compliance with the directions of Supreme Court on 13.10.1997, part result was declared and the plaintiff was at serial no. 47. Consequently, the plaintiff was promoted to the post of Assistant Accountant on 13.10.1997 as per RPR 1978.

1.7. The defendant published a provisional seniority list on 16.12.2003 of Section Officer (Accounts) in the pay scale of Rs. 6500-10900 in which the name of the plaintiff appeared at serial no. 18 whereas the name of Shri V.K. Chaudhary appeared at serial no. 20. Further vide the office order dated 17.03.2004 a final seniority list of the of Section Officer (Accounts) in the pay scale of Rs. 6500-10900 was published in which Sh. V.K. Chaudhary was shown as the senior to the plaintiff at serial no. 10A.

1.8. On 11.06.2002, the plaintiff filed a suit bearing no. 550/2002 for mandatory injunction praying for directing the defendant to deem the plaintiff as appointed for the post of Assistant Accountant with effect from 18.11.1989 or in alternative the plaintiff be deemed as appointed for the post of Assistant Accountant with effect from 15.02.1994 (i.e., the date on which result of 79 candidates was declared). The said suit was dismissed vide order dated 16.02.2005. The plaintiff preferred an appeal against the said judgment in RCA No. 44/2005, which was dismissed vide order dated 05.09.2007. The plaintiff then filed a second appeal against the said judgment of First Appellate Court in RSA No. 303/2007, which was also dismissed vide order dated 19.04.2011.

1.9. The plaintiff made representations to the defendant against the said final seniority list published on 17.03.2004 wherein, Sh. V. K. Chaudhary, who was admittedly his junior had been wrongly shown as a senior, but no reply was received against the said representation. The plaintiff herein retired



on 30.11.2011 and Sh. V.K. Chaudhary superannuated on 31.07.2007.

1.10. In the aforesaid facts, the plaintiff filed the present suit (on 29.11.2011) stating that defendant as on 18.06.2002 illegally granted notional promotions to Shri. V.K. Chaudhary for the post of Section Officer (Accounts) as well as for the post of Assistant Manager (Finance) for a date prior to the plaintiff, which is against the law and has infringed the fundamental right of the plaintiff. It was contended that the plaintiff was already working on the post of Section Officer (Accounts) with effect from 03.06.2002 and he was therefore senior to Sh. V.K. Chaudhary.

1.11. The defendant filled written statement to the said plaint, wherein the defendant resisted the claims in the plaint stating that the suit is liable to be dismissed as the same is barred by principle of res-judicata with reference to the earlier civil suit (no. 550/2002) filed on 11.06.2002. It was further averred in the written statement that the suit is liable to be dismissed and rejected as being time barred with respect to the challenged seniority list dated 17.03.2004.

Arguments of the Appellant i.e., defendant

2. The learned senior counsel for the Appellant i.e., defendant states that the reliefs sought in the suit are barred by limitation. He states that the cause of action in favour of the plaintiff arose on 17.03.2004 (i.e., the date of publication of final seniority list). He states that the suit instituted on 29.11.2011 challenging the said final seniority list is barred by limitation. He states that the representations made by the plaintiff against the said seniority list cannot extend the period of limitation and therefore, the Trial Court erred in relying upon the last written representation dated 13.04.2011 (Ex.PW-1/10). He relied upon the judgement of Supreme Court in *State of*



Uttaranchal and Another v. Shiv Charan Singh Bhandari and Others². He states that the reliefs sought in this suit would be governed by Article 113 of the Limitation Act, 1963 ('the Act of 1963').

2.1. He states that the plaintiff was aggrieved by his supersession on account of Shri V. K. Chaudhary being placed at serial no. 10A in the final seniority list above the plaintiff. He states that initially Shri V. K. Chaudhary was impleaded as defendant no. 2 in the suit and since, he was thereafter deleted from the array of parties on 26.09.2013, the relief sought in the suit could not have been granted in the absence of Shri V. K. Chaudhary.

2.2. He states that before the Trial Court, initially on 27.08.2012 a specific issue pertaining to a seniority list was framed; however, the said issue was deleted and the issues were reframed on 17.05.2016. He states that with the deletion of the issue pertaining to validity of seniority list, the relief granted by the Trial Court cannot be sustained.

2.3. He states that the Courts below failed to appreciate that the plaintiff herein had filed an earlier suit (No. 550/2002 on 11.06.2002) alongwith one Mr. U.B. Singh, which was dismissed against the plaintiff. He states that the decision of the said suit operates as *res judicata* in the present proceedings.

Arguments on behalf of the Respondent i.e., the plaintiff

3. The learned counsel for the Respondent i.e., the plaintiff states that there is no dispute on the merits of the claims of the plaintiff that he was senior to Shri V. K. Chaudhary and was wrongly superseded during the preparation of the seniority list.

3.1 He states that the plaintiff retired on 30.11.2011 and continued to make representation against the supersession to the defendant until his

² (2013) 12 SCC 179.



superannuation. He states that the Trial Court has rightly held that the cause of action was continuing in favour of the plaintiff and has rightly relied upon the written representations issued by the plaintiff.

3.2 He states that the last representation was made on 13.04.2011 and the suit was filed on 29.11.2011 (i.e., within five (5) months). He therefore, states that the suit was within limitation and relies upon the judgements of the Supreme Court in *Anand Swarup Singh v. State of Punjab*³, *Shri M.L. Patil (Dead) through LRs v. The State of Goa and Anr.*⁴ and *MCD & Ors. v. R.B. Tomar*⁵

3.3 He states that the plaintiff herein is restricting its claim for consequential financial benefits towards arrears for a period of three (3) years prior to the filing of the suit.

3.4 He states that the supersession of the plaintiff by his junior Shri V. K. Chaudhary is writ large and he relies upon the chart referred to by the Trial Court in the impugned order to demonstrate the said illegality.

3.5 He states that the earlier suit filed by the plaintiff (being no. 550/2002 on 11.06.2002) against the defendant was on a different cause of action. He states that no relief with respect to the supersession by Shri V. K. Chaudhary was sought in the earlier suit. He states therefore, the Courts below rightly held that the present suit is not barred by *res judicata*.

³ 1972 SLR 147 (SC) 33.

⁴ 2022 SCC OnLine SC 685.

⁵ 2014:DHC:5680-DB.



Analysis and findings

4. This Court has considered the submissions of the counsel for the parties and perused the record.

Limitation

5. It needs to be noted, at the outset, that the Trial Court has returned a detailed finding on merits that the plaintiff herein was senior to Shri V.K. Chaudhary; the plaintiff was without any cause superseded by the defendant and wrongly placed below Shri V.K. Chaudhary in the final seniority list. The deliberations of the Trial Court are recorded under Issue Nos. 1 and 2. The said finding of the Trial Court was upheld by the First Appellate Court. The said findings have not been assailed before this Court and no arguments were addressed against the said findings of the Courts below.

5.1 The Trial Court succinctly brought out the aspect of wrongful supersession in a table set out in its judgment which reads as under:

Post	Sh. V.K. Chaudhary	Raghubir Singh (plaintiff)
Assistant Accountant	Promotion to the post of Assistant Accountant w.e.f. 18.06.2002 but <u>notionally promoted</u> w.e.f. 10.06.1995.	Promotion to the post of Assistant Accountant w.e.f. 10.03.1997 .
Section Officer (Accounts)	Post of Section Officers (Accounts). Notionally Promoted w.e.f. on adhoc basis on 27.05.2003 thereafter on regular basis on 01.06.2007 but <u>notionally</u> w.e.f. 16.03.2001.	Post of Section Officer (Accounts) w.e.f. 03.06.2002 on regular basis .
Assistant Manager (Finance)	To the post of Assistant Manager, Finance on 22.06.2007 but notionally	Promoted to the post of Assistant Manager Finance w.e.f. 09.01.2008.



	w.e.f. 10.05.2007.	
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5.2 The aforesaid table clearly brings out that whereas the plaintiff was promoted from the post of Assistant Accountant to Section Officer (Accounts) to Assistant Manager (Finance) on regular basis after completing service on each post as per the extant rules; on the other hand, Shri V.K. Chaudhary was given notional promotion to each of the aforesaid posts on the basis of the judgment of a Civil Court dated 05.02.2002 passed in Civil Suit No. 188/2000 in his favour.

5.3 In pursuance to a decree of the Civil Court dated 05.02.2022 passed in favour of Sh. V.K. Chaudhary, defendant on 18.06.2002 notionally promoted Sh. V.K. Chaudhary to the post of Assistant Accountant with effect from 10.06.1995. Pertinently, the plaintiff as on 18.06.2002 was already working on the higher post of Section Officer (Accounts) on regular basis w.e.f. 03.06.2002 and was therefore senior to Sh. V.K. Chaudhary. Infact, Sh. V.K. Chaudhary was promoted as Section Officer (Accounts) on ad-hoc basis on 27.05.2003.

5.4 In the provisional seniority list circulated on 16.12.2003, the plaintiff was placed at serial no. 18 and Shri V.K. Chaudhary was placed at serial no. 20. Upon objections being raised by Shri V.K. Chaudhary the provisional seniority list was modified and as per the final seniority list Shri V.K. Chaudhary was placed at serial no. 10-A whereas the plaintiff continued to remain at serial no. 18.

Admittedly, the change in the seniority list was carried out without granting any opportunity of hearing to the plaintiff. The wrongful action of the defendant caused injury to the plaintiff, who was superseded by his junior



(i.e., Shri V.K. Chaudhary) without any cause. The plaintiff made written representations to the defendant against the said supersession and the last of the representation was made on 13.04.2011. The defendant before this Court has not disputed during oral arguments that the plaintiff was wrongly superseded in the preparation of the final seniority list and was in fact senior to Sh. V.K. Chaudhary. Therefore, on these admitted facts the Trial Court and First Appellate Court have rightly held on merits that the plaintiff's supersession was illegal and contrary to the extant rules.

6. In the facts of this case, the plaintiff superannuated on 30.11.2011 and Sh. V.K. Chaudhary also stands superannuated on 31.07.2007. The plaintiff was senior to Shri. V.K. Chaudhary and seeks notional promotion to the post of Assistant Accountant, Section Officer (Accounts) and Assistant Manager (Finance) from the same date as was notionally fixed for Shri V.K. Chaudhary. Therefore, the relief sought by the plaintiff in effect is qua re-fixation of his pay and consequentially his pension.

6.1 In the facts of the present case, the defendant fairly admits (as recorded in order dated 17.10.2023 in these proceedings) that implementation of the decree of the Trial Court will not affect other employees (current or retired) of the defendant and therefore, there is no cascading effect or administrative upheaval within the defendant organisation.

Further, it is a matter of record that Shri V.K. Chaudhary has already superannuated on 31.07.2007. Therefore, in the facts of this case, the effect of the implementation of the decree of the Trial Court is between the plaintiff and defendant (employer) alone. It does not affect rights of any third-party employees nor does it unsettle matters settled.

6.2 The plaintiff has contended that the relief sought in the suit has a direct



effect on the pensionary benefits of the plaintiff and therefore it is a continuing wrong.

6.3 In the considered opinion of this Court, in view of the fact that: (i) the claim of the plaintiff on merits is admitted; (ii) the implementation of the decree does not have any effect on the settled rights of third parties; (iii) the relief sought affects the pensionary benefits of the plaintiff, which is continuing wrong; (iv) the plaintiff continued to make representations to the defendant against the supersession and thus, did not render the claim stale; and (v) the plaintiff has restricted his claim for arrears to a period of three (3) years prior to the date of filing of the suit; the Courts below have rightly concluded that the suit of the plaintiff is not barred by limitation and is governed by Article 55 of the Limitation Act, 1963.

6.4 The judgment of the Supreme Court in *Union of India v. Tarsem Singh*⁶, relied upon by the defendant rather substantiates the claim of the plaintiff herein. The relevant portion of the judgment reads 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 reopening 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 refixation 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*

⁶ (2008) 8 SCC 648.



will be applied.”

(Emphasis supplied)

6.5 The Supreme Court in ***M.L. Patil v. State of Goa*** (supra) has reiterated that as far as pension is concerned, it a continuous cause of action and Courts are not justified in denying the entitlement to arrears of pension at revised rates.

6.6 This Court, therefore, does not find any merit in the submission of the defendant that the suit was barred by limitation.

Res judicata

7. With respect to the contention of the defendant that the reliefs claimed by the plaintiff in suit no. 164/2011 is barred by the principles of *res judicata* as the same issue was decided against him in the earlier suit (filed on 11.06.2002), the same as well does not give rise to any question of law, much less a substantial question of law.

7.1 The Trial Court in its deliberation on issue no. 3 after perusing the pleadings in both the suits has returned a finding that the issue of supersession of the plaintiff by Shri V.K. Chaudhary was not an issue raised or adjudicated upon in the earlier suit. The Appellate Court as well has concurred with the finding of the Trial Court and opined that the issues raised in the present suit did not arise for consideration in the previous suit.

7.2 The aforesaid deliberation of the Courts below is a finding of fact returned after perusing the pleadings of the prior suit. The counsel for defendant has failed to point out the error in the said findings returned by the Courts below after duly appreciating the record of the earlier suit. The cause of action for filing the present suit arose due to the supersession of the plaintiff by Sh. V.K. Chaudhary, which cause arose after 17.03.2004 and therefore could not have been a subject matter of the earlier suit instituted on



11.06.2002. This Court, therefore, finds no error of law in the findings returned by the Courts below holding that this suit is not barred by *res judicata*.

7.3 Therefore, no substantial question of law on the issue of *res judicata* as proposed by the defendant arises for consideration.

Non-joinder of the necessary party

8. Defendant has contended that the suit is bad for non-joinder of the necessary party i.e., Shri V.K. Chaudhary. In the facts of this case, Shri V.K. Chaudhary was impleaded initially as defendant no. 2. He entered appearance and filed his written statement. He was thereafter deleted from the array of parties on 26.11.2013 without any opposition by any party. The issues were re-framed by the Trial Court on 17.05.2016 and no issue with respect to non-joinder was proposed by the defendant. Shri V.K. Chaudhary has superannuated on 31.07.2007 i.e., four (4) years prior to the filing of the suit. The reliefs sought in the suit has no effect on the notional promotions granted to Shri. V.K. Chaudhary and monetary benefits received by him. In any event, as noted above the defendant has not disputed that the plaintiff herein is in fact a senior to Sh. V.K. Chaudhary. Further, even in his written statement Sh. V.K. Chaudhary has not disputed or opposed the reliefs sought by the plaintiff in the present suit. In these facts, this Court does not find any merit in the submission of the defendant that Shri V.K. Chaudhary was a necessary party.

9. The arguments raised by the Appellant do not give rise to any question of law much less a substantial question of law and the grounds merely challenge the finding of facts.

10. In this regards, it would be appropriate to refer to the case of



Chandrabhan (Deceased) Through LRs & Ors. v. Saraswati & Ors.⁷

wherein the Supreme Court observed that the second appeal only lies on a substantial question of law and not on a mere question of law and that the High Court will not interfere with the findings of the facts arrived at by the Court below. The operative portion of the said judgment reads as under:

“33. The principles relating to Section 100 of the CPC relevant for this case may be summarised thus:

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

*(ii) **The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents and involves a debatable legal issue.** A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.*

*(iii) **The general rule is that the High Court will not interfere with findings of facts arrived at by the courts below.** But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to “decision based on no evidence”, it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”*

(Emphasis supplied)

11. This second appeal is accordingly dismissed and the order of the

⁷ AIR 2022 SCC 4609.



First Appellate Court and the Trial Court are upheld. The Appellant is directed to forthwith comply with the directions of the Trial Court without any further delay.

12. Pending application stands disposed of.

MANMEET PRITAM SINGH ARORA, J

JANUARY 25, 2024/rhc/hp/sk