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

RSA-172-1993 (O&M)

Date of decision: 23.12.2025

State of Haryana and others

...Appellants

Versus

Dalip Singh (deceased) through his wife Suman Khanna

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Raj Partap Singh Brar, AAG, Haryana, for the appellants.

Mr. Arav Gupta, Advocate for the respondent.

VIKAS BAHL, J. (ORAL)

1. Challenge in the present appeal is to the judgment dated 06.02.1992 vide which the suit filed by the plaintiff/respondent was decreed and the plaintiff was held entitled to selection grade w.e.f. 13.04.1977. Challenge is also to the judgment and decree dated 02.09.1992 vide which the appeal filed by the present appellants/defendants was dismissed by the First Appellate Court.

ARGUMENTS ON BEHALF OF THE APPELLANTS:-

2. Learned counsel for the appellants has submitted that in the present case, the suit filed by the plaintiff was barred by limitation. It is submitted that the suit had been instituted on 09.03.1990 whereas the



cause of action for filing the suit had arisen to the plaintiff on 18.12.1979 when the Director Health Services Haryana, vide office letter No.8/44-E-III-79 14580-680 dated 18.12.1979, had granted the selection grade to Pharmacist from 13.04.1977. It is submitted that it is the own case of the plaintiff that his juniors had been granted the said benefit and the same had not been granted to the plaintiff-respondent and thus, the cause of action to the plaintiff-respondent had arisen on 18.12.1979 whereas the suit had been filed after a delay of more than 10 years and the limitation period for filing the suit was three years and thus, the suit deserves to be dismissed on the said ground alone. It is submitted that although, the issue of limitation was not pressed before the trial Court as well as the First Appellate Court but it is a matter of settled law that even in case issue of limitation is not pressed, then also, Section 3 of the Limitation Act, 1963 casts a duty on the Court to dismiss the suit which is barred by limitation. In support of his arguments, learned counsel for the appellants has relied upon the judgment of the Orissa High Court in the case of *State of Orissa Vs. Adikanda Patra*, reported as *1999 AIR (Orissa) 113*. It is argued that thus, finding on issue No.6 be set aside and the suit of the plaintiff-respondent be dismissed as the same is barred by limitation.

ARGUMENTS ON BEHALF OF THE RESPONDENT:-

3. Learned counsel for the respondent, on the other hand, has submitted that the judgments of the trial Court as well as First Appellate Court are in accordance with law and deserve to be upheld. It is submitted that respondent has a cast iron case on merits, inasmuch as, it is not in



dispute that the entries which were adverse to the plaintiff and were never communicated to him, had been taken into consideration for non-grant of selection grade. It is submitted that it has been repeatedly held by the Hon'ble Supreme Court that all ACRs are required to be communicated to the employee concerned and in case the same is not communicated, then, the said ACRs, more so, when the same are adverse, cannot be taken into consideration while rejecting the case and for non-grant of relief to which the respondent is entitled to. In support of his arguments, learned counsel for the respondent has relied upon the judgments passed by the Hon'ble Supreme Court in the cases of *Dev Dutt Vs. Union of India and others*, reported as 2008(8) SCC 725, *Abhijit Ghosh Dastidar Vs. Union of India and others*, reported as 2009(16) SCC 146, judgment dated 23.09.2022 passed in Civil Appeal No.2021 of 2022 titled as *Union of India and others Vs. G.R. Meghwal* as well as judgment of the Hon'ble Supreme Court in the case of *Gurdial Singh Fijji Vs. The State of Punjab and others* reported as 1979 (2) SCC 368.

4. Learned counsel for the respondent has further submitted that the respondent had crossed the efficiency bar on 01.11.1976 and thus, earlier average ACRs which were for the year 1970-71, 1971-72 and 1972-73, as per the case of the respondent, are liable to be ignored as once the respondent-plaintiff had crossed the efficiency bar, then as a matter of settled law, earlier adverse entries would be "washed off". In support of his arguments, learned counsel for the respondent has relied upon the judgment of the Hon'ble Supreme Court in the case of *Pyare Mohan Lal*



Vs. State of Jharkhand and others, reported as **2010(10) SCC 693**.

5. Learned counsel for the respondent has submitted that argument raised on behalf of the appellants with respect to limitation is also misconceived and deserves to be rejected. It is submitted that a perusal of the judgment of the trial Court would show that issue No.6 which was on limitation was not pressed. No argument on the question of limitation was also raised before the First Appellate Court. Even in the grounds of appeal of the present RSA, no such argument or challenge to issue No.6 has been made. It is submitted that in the said circumstances, the appellants cannot be permitted to raise the said plea for the first time before this Court. In support of his arguments, learned counsel for the respondent has relied upon the judgment passed by the Himachal Pradesh High Court in the case of **Prakash Chand and others Vs. Rup Singh dated 05.10.2016, Law Finder Doc Id #1266749** which has been upheld by the Hon'ble Supreme Court, judgment of the Coordinate Bench of this Court dated 12.11.2021 passed in **RSA-74-2021 titled as Harwinder Singh Vs. Gurpreet Singh and others**, judgment of the Allahabad High Court in the case of **Tej Narain Singh Vs. Mahendra Chaubey and others**, reported as **2013(8) RCR (Civil) 2488**, judgment of the Jharkhand High Court dated 09.02.2023, titled as **Ramjee Prasad and others Vs. Balku Oraon and others, Law Finder Doc Id # 2121962** as well as judgment of the Calcutta High Court dated 14.05.2019 titled as **Sri Manik Lal Sen and others Vs. Bimal Kanta Chattopadhyay and others, Law Finder Doc Id # 1471022**, which has been upheld by the Hon'ble



Supreme Court. It is submitted that even as per the case set up by the appellants-defendants, it was only vide letter dated 21.07.1987, which was received subsequent to the said date, that respondent-plaintiff was granted selection grade from 01.02.1982 and thus, was not granted the same from the year 1977 to which the present respondent was entitled to. It is submitted that the suit has been filed within a period of three years from the date the cause of action arose to the respondent-plaintiff i.e., on 21.07.1987 and thus, the suit is within limitation. It is submitted that no order was ever communicated to the plaintiff prior to the said letter dated 21.07.1987 by the appellants either rejecting the case of the plaintiff or even stating that the plaintiff is not entitled to selection grade from the said date of 1977.

ANALYSIS AND FINDINGS:-

6. This Court has heard learned counsel for the parties and has perused the paper book as well as record of the trial Court and is of the view that appeal filed by the State of Haryana is meritless and deserves to be dismissed and impugned judgments of the trial Court as well as the First Appellate Court deserve to be upheld for the reasons which have been detailed hereinafter.

7. The respondent-plaintiff had filed a suit for declaration to the effect that the plaintiff was entitled to get his first selection grade from 13.04.1977. It is the case of the plaintiff that he was appointed as Pharmacist vide office letter dated 22.10.1970 on temporary basis and in pursuance of his appointment, he had joined as Pharmacist at Primary



Health Centre, Madhosinghana, Tehsil and District Hisar which is now Tehsil and District Sirsa. It is further the case of the plaintiff that his services were regularized vide letter dated 10.07.1972 as he was selected by SSS Board, Haryana for the post of Pharmacist and the seniority number of the plaintiff in the selection list of SSS Board, Haryana was at Sr. No.43 and that the defendants had granted selection grade to his juniors namely Bhim Sain Garg Pharmacist as well as Baldev Kishan Pharmacist whose seniority number in the selection list were at Sr. Nos.71 and 77 respectively but the same was not granted to the respondent-plaintiff in spite of him being entitled to the same. The present appellants had filed written statement and in the written statement, the plea taken for non-grant of selection grade was that 50% of the service record of the plaintiff was not good. The details of the ACRs were mentioned in para 3 of the written statement. Relevant portion of para 3 of the written statement is reproduced hereinbelow:-

“3.The plaintiff was not having 50% good record of his service at the time of considering his case for the selection grade. Therefore the selection grade could not be given to the plaintiff. The detail of his ACRs is as under:-

<i>1970-71</i>	<i>Average</i>
<i>1971-72</i>	<i>Average</i>
<i>1972-73</i>	<i>Average</i>
<i>1973-74</i>	<i>Satisfactory</i>
<i>1974-75</i>	<i>Good</i>
<i>1975-76</i>	<i>Good</i>
<i>1976-77</i>	<i>V.good”</i>



8. It was further the case of the respondents in para 5 that the plaintiff has been granted selection grade vide letter dated 21.07.1987 w.e.f. 01.02.1982.

9. The trial Court, vide order dated 17.08.1990, had framed the following issues:-

“1. Whether the plaintiff is entitled to get his first selection grade of Pharmacist from 13.4.77? OPP.

2. Whether the suit is not maintainable in the present form OPD.

3. Whether the plaintiff has not locus-standi to file the present suit? OPD

4. Whether the plaintiff has no cause of action to file the present suit? OPD

5. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD.

6. Whether the suit is not within time? OPD

7. Relief.”

10. With respect to issue Nos.2 to 6, which also includes issue on the aspect of whether the suit was within time or not, the onus of which was on the defendants/present appellants, it was specifically observed that that the said issues were “unpressed” and thus, all the said issues were decided against the defendants. Issue No.1 was also decided in favour of the plaintiff and against the defendants by the trial Court by taking into consideration several aspects. First aspect which was taken into consideration was that ACRs, more so, the ones which carried the remark “average”, were not communicated to the plaintiff and the said fact was admitted by the witnesses who had been produced. It was observed that



ACRs, more so, the ones which carried the remark “average” could not have been taken into consideration for the purpose of non-grant of selection grade, once they were not communicated to the plaintiff, more so, when the juniors of the plaintiff had been granted the said selection grade. Several judgments on the said aspect were taken into consideration. It was further observed that since the plaintiff had crossed the efficiency bar w.e.f., 01.11.1976 (vide Ex.P5), thus, even assuming there were average ACRs prior to the said date, then, the same should not have been considered while considering the case of the plaintiff for the grant of the selection grade. On the said aspect also, several judgments were considered. Ex.P4 which contains the details of the ACRs was reproduced in para 13 of the judgment of the trial Court and the relevant portion of the said para 13 is reproduced hereinbelow:-

“In the Ex.P4, the detail of plaintiff’s A.C.Rs is as under:-

<i>1970-71</i>	<i>Average</i>
<i>1971-72</i>	<i>Average</i>
<i>1972-73</i>	<i>Average</i>
<i>1973-74</i>	<i>Satisfactory</i>
<i>1974-75</i>	<i>Good</i>
<i>1975-76</i>	<i>Good</i>
<i>1976-77</i>	<i>Good</i>
<i>1977-78</i>	<i>V.Good”</i>

11. It has been pointed out by the learned counsel for the respondent-plaintiff that ACR for the year 1976-77 was “very good” and with respect to the same, reference has been made to page 53 of the record where entire ACR for the year 1976-77 mentions that the same was “very



good”. Further reference has also been made to the written statement, relevant portion of which is reproduced hereinabove, to show that for the year 1976-77, ACR of the plaintiff carried the remark of “very good”. Apparently, the trial Court has wrongly recorded ACR for the year 1976-77 as “good” instead of “very good”.

12. An appeal filed by the present appellants was also dismissed by the First Appellate Court. A perusal of the judgment dated 02.09.1992 would show that it was observed that Krishan Lal Clerk had appeared from the office of Director Health Centre, Haryana, Chandigarh as PW2 and had stated that plaintiff was not granted selection grade which was due to him w.e.f., 13.04.1977 only on account of the abovesaid “Average Reports” (ACRs) and had further admitted that the average reports (ACRs) were not communicated to the plaintiff and that juniors of the plaintiff i.e., Baldev Kishan and Bhim Sain had already been granted the selection grade w.e.f., 13.04.1977. The aspect that the plaintiff had crossed the efficiency bar was also taken into consideration by the First Appellate Court.

13. The findings of the trial Court as well as the First Appellate Court on the aspect that average reports (ACR’s) were not communicated to the plaintiff-respondent could not be disputed before this Court nor could be shown to be either perverse or against the record. It is thus, not in dispute that the said reports were never communicated, much less, prior to the date on which the selection grade was required to be granted to the plaintiff.



14. The Hon'ble Supreme Court in the case of ***Dev Dutt*** (Supra), had observed that every entry must be communicated to the employee concerned so that he may have an opportunity for making representation against it if he is aggrieved. It was further observed that even instructions/letter from the authorities stating that only adverse entries are to be communicated to the concerned employee are liable to be ignored as no Rule or Government instruction can violate Article 14 or any other provision of the Constitution, which is the highest law of the land. It was also observed that even an entry of "good" is required to be communicated as non-communication of the said entry could also adversely affect the employee's chances for promotion or for getting some other benefit because when comparative merit is done between the said employee and other person, then in such a situation, even entry of "good" could be an entry against the employee. In the said case, it was held that in order to uphold fairness and transparency in public administration, all the entries whether poor, fair, average, good or very good in the Annual Confidential Report, are required to be communicated within reasonable time and same are required to be done even in case there are rule/instructions prohibiting the same. Relevant portion of the said judgment is reproduced hereinbelow:-

"9. We do not agree. In our opinion every entry must be communicated to the employee concerned, so that he may have an opportunity of making a representation against it if he is aggrieved.

10. In the present case the bench mark (i.e. the essential



requirement) laid down by the authorities for promotion to the post of Superintending Engineer was that the candidate should have 'very good' entry for the last five years. Thus in this situation the 'good' entry in fact is an adverse entry because it eliminates the candidate from being considered for promotion. Thus, nomenclature is not relevant, it is the effect which the entry is having which determines whether it is an adverse entry or not. It is thus the rigours of the entry which is important, not the phraseology. The grant of a 'good' entry is of no satisfaction to the incumbent if it in fact makes him ineligible for promotion or has an adverse effect on his chances.

11. Hence, in our opinion, the 'good' entry should have been communicated to the appellant so as to enable him to make a representation praying that the said entry for the year 1993-94 should be upgraded from 'good' to 'very good'.....

12. Learned counsel for the respondent submitted that under the Office Memorandum 21011/4/87 [Estt.'A'] issued by the Ministry of Personnel/Public Grievance and Pensions dated 10/11.09.1987, only an adverse entry is to be communicated to the concerned employee. It is well settled that no rule or Government instruction can violate Article 14 or any other provision of the Constitution, as the Constitution is the highest law of the land. The aforesaid Office Memorandum, if it is interpreted to mean that only adverse entries are to be communicated to the concerned employee and not other entries, would in our opinion become arbitrary and hence illegal being violative of Article 14. All similar Rules/Government Orders/Office Memoranda, in respect of all services under the State, whether civil, judicial, police, or other service (except the military), will hence also



be illegal and are therefore liable to be ignored.

13. xxx xxx

14. ***In our opinion, every entry (and not merely a poor or adverse entry) relating to an employee under the State or an instrumentality of the State, whether in civil, judicial, police or other service (except the military) must be communicated to him, within a reasonable period, and it makes no difference whether there is a bench mark or not. Even if there is no bench mark, non-communication of an entry may adversely affect the employee's chances of promotion (or getting some other benefit), because when comparative merit is being considered for promotion (or some other benefit) a person having a 'good' or 'average' or 'fair' entry certainly has less chances of being selected than a person having a 'very good' or 'outstanding' entry.***

15. *In most services there is a gradation of entries, which is usually as follows :*

(i) Outstanding

(ii) Very Good

(iii) Good

(iv) Average

(v) Fair

(vi) Poor

A person getting any of the entries at items (ii) to (vi) should be communicated the entry so that he has an opportunity of making a representation praying for its upgradation, and such a representation must be decided fairly and within a reasonable period by the concerned authority.

16. *If we hold that only 'poor' entry is to be communicated, the consequences may be that persons getting 'fair', 'average', 'good' or 'very good' entries will not be able to represent for its upgradation, and this may subsequently adversely affect*



their chances of promotion (or get some other benefit).

17. *In our opinion if the Office Memorandum dated 10/11.09.1987, is interpreted to mean that only adverse entries (i.e. 'poor' entry) need to be communicated and not 'fair', 'average' or 'good' entries, it would become arbitrary (and hence illegal) since it may adversely affect the incumbent's chances of promotion, or get some other benefit.*

18 to 38. xxx xxx

39. *In the present case, we are developing **the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of nonarbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or Government orders.***

40. *We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. **We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an***



***appeal from Caesar to Caesar.** All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.*

41. We, however, make it clear that the above directions will not apply to military officers because the position for them is different as clarified by this Court in Union of India v. Major Bahadur Singh, 2005(4) SCT 844 : 2006(1) SCC 368. But they will apply to employees of statutory authorities, public sector corporations and other instrumentalities of the State (in addition to Government servants).

42 to 44 xxx xxx

45. In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such noncommunication would be arbitrary, and as such violative of Article 14 of the Constitution.

46. In view of the above, we are of the opinion that both the learned Single Judge as well as the learned Division Bench erred in law. Hence, we set aside the judgment of the Learned Single Judge as well as the impugned judgment of the learned Division Bench.”

15. The law laid down in the abovesaid judgment fully applies to the present case. In the present case, even the adverse ACR's were not communicated to the plaintiff. Judgment in the abovesaid case was followed by the Hon'ble Supreme Court in the case of **Abhijit Ghosh**



Dastidar (Supra) and after applying the same, the Hon'ble Supreme Court had observed that the entry of "good" which was not communicated to the appellant therein should not be taken into consideration for the purpose of promotion to the higher grade and appellant therein was granted promotion w.e.f., 28.08.2000. Relevant portion of the judgment is reproduced hereinbelow:-

"8. Coming to the second aspect, that though the benchmark "very good" is required for being considered for promotion admittedly the entry of "good" was not communicated to the appellant. The entry of 'good' should have been communicated to him as he was having "very good" in the previous year. In those circumstances, in our opinion, non-communication of entries in the ACR of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances for promotion or get other benefits. Hence, such non-communication would be arbitrary and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above referred decision relied on by the appellant. Therefore, the entries "good" if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him.

9. Learned counsel appearing for the appellant has pointed out that the officer who was immediately junior in service to the appellant was given promotion on 28.08.2000. Therefore, the appellant also be deemed to have been given



promotion from 28.08.2000.”

16. Even in the latest judgment dated 23.09.2022 passed by the Hon’ble Supreme Court in the case of ***G.R. Meghwal*** (Supra), judgment passed by the Hon’ble Supreme Court in the case of ***Dev Dutt*** (Supra) had been relied upon. Further, in the case of ***Gurdial Singh Fijji*** (Supra), the Hon’ble Supreme Court had observed as under:-

“16. The principle is well-settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. Unfortunately, for one reason or another, not arising out of any fault on the part of the appellant, though the adverse report was communicated to him, the Government has not been able to consider his explanation and decide whether the report was justified. In these circumstances, it is difficult to support the non-issuance of the integrity certificate to the appellant. The chain of reaction began with the adverse report and the infirmity in the link of causation is that no one has yet decided whether that report was justified. We cannot speculate, in the absence of a proper pleading, whether the appellant was not found suitable otherwise, that is to say, for reasons other than those connected with the non-issuance of an integrity certificate to him.”



17. Judgment passed in the abovesaid case fully applies to the present case, inasmuch as, in the present case also, the plaintiff was never communicated average ACRs and thus, the same could not have been made the basis for non-grant of selection grade to the plaintiff-respondent. The findings of the trial Court as well as First Appellate Court on the said aspect are in accordance with law and deserve to be upheld.

18. Additionally, it would be relevant to note that it is also not in dispute that the plaintiff-respondent had crossed efficiency bar w.e.f., 01.11.1976 (Ex.P5). Alleged average ACRs were prior to the said date and thus, the trial Court as well as Appellate Court have rightly taken into consideration the said aspect as additional aspect in decreeing the suit of the plaintiff. It would be relevant to note that in the case of ***Pyare Mohan Lal*** (Supra), the Hon'ble Supreme Court had taken note of the judgment of the Hon'ble Supreme Court in the case titled as ***State of Punjab Vs. Dewan Chuni Lal***, reported as ***AIR 1970 Supreme Court 2086*** in which it was held that adverse entries of Government employee in his ACRs are liable to be ignored if subsequent to recording of the same, he is allowed to cross the efficiency bar, as the same would mean that while permitting him to cross the efficiency bar such entries had been considered and were not found of serious nature for the purpose of crossing the efficiency bar. Other judgments on the said aspect were also considered. However, since the Hon'ble Supreme Court in the said case of ***Pyare Mohan Lal*** (Supra) was dealing with the case of compulsory retirement thus, the Hon'ble Supreme Court had observed that the



“washed off theory” would not be universally applicable and it may have relevance while considering the case of a Government servant for further promotion but not in a case where the employee is being assessed by the Reviewing authority to determine whether he is fit to be retained in services or if he is required to be given compulsory retirement, as the Committee at the time of consideration of compulsory retirement is required to see the entire service record. Thus, for the purpose of selection grade, “washed off theory” would still be relevant. At any rate, the said aspect is only an additional aspect for decreeing the suit of the plaintiff, as the primary aspect on merits of the case of the plaintiff is with respect to non-communication of the average reports which were adverse to the plaintiff, which aspect has been discussed in detail hereinabove.

19. From the above, it is apparent that the plaintiff is entitled to the relief which has been claimed in the suit and the suit of the plaintiff has been rightly decreed by the trial Court and the said judgment has been rightly upheld by the First Appellate Court.

20. To be fair to the learned counsel for the appellants, it would be relevant to deal with the argument raised by the learned counsel for the appellants on the aspect of suit being barred by limitation. It is not in dispute that the trial Court had framed issue No.6 which was to the effect that, as to whether the suit was within time and onus of the same was on the defendants/appellants. In para 11 as well as in para 19 of the judgment of the trial Court, it was specifically recorded that the said issue No.6 along with the issues Nos.2 to 5 were not pressed by the



defendants/appellants. A perusal of the judgment of the First Appellate Court would show that no argument challenging the finding on issue No.6 was raised before the First Appellate Court. Even a perusal of the grounds of appeal in the present Regular Second Appeal would show that no ground challenging the finding on issue No.6 has been raised. It is not even remotely the case of the appellants in the grounds of appeal in the present RSA that the said issue was pressed before the trial Court or before the First Appellate Court or that the finding on the said issue is incorrect.

21. The Himachal Pradesh High Court in the case of ***Prakash Chand and others*** (Supra) had observed that where the issue with respect to the suit being time barred was not pressed, then, the appellants cannot be permitted to raise the said issue in Regular Second Appeal as same was not pressed before the trial Court. The said judgment was upheld by the Hon'ble Supreme Court vide order dated 16.01.2017 passed in Special Leave to Appeal (C) No.674 of 2017. Even the Coordinate Bench of this Court in the case of ***Harwinder Singh*** (Supra), had observed that if from the grounds of appeal it is apparent that before the First Appellate Court there was no stress on the issue that the suit was barred by limitation and the said issue was not argued before the First Appellate Court, it was apparent that the appellant therein had consciously chosen not to press the said argument of limitation before the First Appellate Court and once the appellant therein did not chose to argue the same before the First Appellate Court, it was observed that the appellant therein had waived the



plea of limitation and could not be permitted to raise the same in the Regular Second Appeal. The Doctrine of Waiver was considered in the said case by placing reliance on various judgments of the Hon'ble Supreme Court. The Allahabad High Court in the case of ***Tej Narain Singh*** (Supra) had observed that the issue of limitation is a mixed question of law and facts and since the said issue had not been pressed before the trial Court as well as before the First Appellate Court, appellant therein could not be permitted to raise a mixed question of law and facts for the first time in Second Appeal as a substantial question of law.

22. The Jharkhand High Court in the case of ***Ramjee Prasad and others*** (Supra) had observed that the appellant therein had not pressed certain issues including the issue of limitation and thus, concurrent finding of two Courts could not be set aside on the said aspect. Similarly, the Calcutta High Court in the case of ***Sri Manik Lal Sen and others*** (Supra) had also observed that once the issue has been framed and the same had not been pressed by the defendants therein at the appellate stage, then, the defendants therein could not raise the said plea. Further the said judgment of the Calcutta High Court has been upheld by the Hon'ble Supreme Court vide judgment dated 23.08.2021 passed in SLP (Civil) Diary No(s).22562 of 2020.

23. Since, learned counsel for the appellants has very vehemently raised the said point, thus, this Court has considered the merits of the said plea of limitation. It is not in dispute that no letter/order rejecting the claim of the plaintiff with respect to the grant of selection grade has been placed



on record of the trial Court. In para 5 of the written statement filed by the present appellants, reference has been made to letter dated 21.07.1987 to say that the selection grade was granted to the plaintiff from 01.02.1982. Para 5 of the said written statement on the reply on merits is reproduced hereinbelow:-

“5. In reply to para 5 of the plaint it is stated that the plaintiff represented to grant him the selection grade from 13.4.77 while he has been given the selection grade from 1.2.82 vide this office letter No.8/44-1EIII-87/5772-5965 dated 21.7.87.”

24. It is not in dispute that suit had been instituted on 09.03.1990 which is within the period of three years from the date of the letter dated 21.07.1987. It is the case of the plaintiff that he was entitled to selection grade. There is no order/communication produced on record rejecting the claim of the plaintiff for grant of selection grade w.e.f., 13.04.1977. The specific letter regarding which reference has been made in the written statement vide which selection grade has been granted to the plaintiff from 01.02.1982 is dated 21.07.1987. It would be relevant to note that it is not in dispute that even the letter dated 21.07.1987 or the letter dated 18.12.1979 have not been produced on record by the defendants/appellants. It is the case of the appellants that the limitation period for filing the suit is three years from the date the cause of action arises to the plaintiff. In the said facts and circumstances, it is apparent that the cause of action would arise to the plaintiff, even in case the averments made in para 5 of the written statement are taken to be true on



its face value, after the issuance of the letter dated 21.07.1987 when only part relief was granted to the plaintiff and in effect, part relief had been rejected. Moreover, in the present case, since the issue with respect to limitation had not been pressed and there is no affirmative evidence/document to show that the cause of action to the plaintiff had arisen prior to the issuance of the said letter dated 21.07.1987, then even in case, the argument raised on behalf of the appellants is taken into consideration, at best, the said issue of limitation would be a mixed question of law and facts and once the appellants had chosen not to press the said issue, it would be a matter of great injustice to the plaintiff to allow the present appeal and set aside the judgments of the trial Court as well as First Appellate Court only on the said aspect, more so, when the case of the plaintiff has been found to be meritorious and judgments of the trial Court as well as First Appellate Court on the aspect of merits have been upheld by this Court.

25. Keeping in view the abovesaid facts and circumstances, the judgments of the trial Court as well as the Appellate Court are upheld and the present appeal is dismissed.

26. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

23.12.2025

Pawan

**(VIKAS BAHL)
JUDGE**

**Whether speaking/reasoned:-
Whether reportable:-**

**Yes/No
Yes/No**