

2025:PHHC:062036



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

206

RSA-1307-2015

DATE OF DECISION: 14.01.2025

MOHINDER SINGH

...APPELLANT

VERSUS

**PUNJAB STATE ELECTRICITY BOARD PATIALA
(NOW PSPCL) AND ORS**

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

**Present: Mr. Aakash Mehta, Advocate for
Mr. Munish Gupta, Advocate
for the Petitioner.**

**Dr. Malvika Singh, Advocate
for Respondent(Through Hybrid Mode)**

SANDEEP MOUDGIL, J (ORAL)

1. The regular second appeal preferred before this Court is against the judgment of the Additional Session Judge, Fast Track Court, Hoshiarpur in Civil Appeal No. 118 of 17.07.2012 decided on 25.11.2014 wherein it was held that the suit for declaration and mandatory injunction filed by the respondent (appellant in the instant RSA) is not maintainable and is barred by limitation.

2. The suit was decreed by Civil Judge Junior Division, Hoshairpur vide judgment dated 29.05.2012 in favour of the appellant/plaintiff whereby respondents No.1 to 5/defendants No.1 to 5 were directed to consider the case of the appellant/plaintiff for

appointment as RTM instead of Work Charge T-Mate w.e.f 21.05.1997 on compassionate ground.

3. The factual backdrop leading to the present case can be read as that father of the appellant/plaintiff was working as a fitter in PSEB and he died of 06.05.1994 while he was in service and the appellant/petitioner was appointed as a work charged Team mate on 21.05.1997 on compassionate grounds and was posted in construction division, Hoshiarpur. The qualification of the appellant/petitioner was under matric so as per the PSEB instructions, he was entitled to be appointed as R.T.M. as PSEB has during the period and even after the appointment of the appellant/plaintiff has appointed dependents of the deceased employees as R.T.M. on compassionate grounds who were also under matric. As per the contentions of the appellant/plaintiff, the cause of action is still continuing as he is suffering constant loss in his salary and allowance since date of his appointment as work charged T-mate i.e 21.05.1997.

4. Notice of the suit was given to the respondents/defendants to file the written statement who categorically submitted that the father of the appellant/plaintiff was working in Mukerian Hydel Project and after completion of the Mukerian Hydel Project, which lies under irrigation department were shifted to Punjab State Electricity Board. After the death of father of the appellant/plaintiff, the legal representative applied for job on compassionate grounds to PSEB which the department was not bound to give as there was no obligation on the part of PSEB to give employments on compassionate grounds. However, the appellant/plaintiff was offered a job of work charge T mate which he gladly accepted without any grouse and started working on the same from 21.05.1997

5. The trial Court framed following issues on the basis of pleadings made by the parties to the present is:-

1. Whether the plaintiff is entitled to declaration as prayed for? OPP

2. Whether the plaintiff is entitled to mandatory injunction as prayed for? OPD

3. Whether the suit is not maintainable in the present form? OPD

4. Whether the Plaintiff has no locus standi to file the present suit?

OPD

5. Whether the plaintiff has not come to the court with clean hands? OPD

6. Whether the present suit is within time? OPP

7. Relief.

6. The trial Court observed that since the case of the appellant/plaintiff was not considered despite representations made by him for appointing him as RTM therefore, the case of the appellant/plaintiff is liable to be considered for the appointment as RTM instead of Work charge T-mate w.e.f. 21.05.1997. The trial Court thereafter decreed the suit declaring the appellant/plaintiff to be entitled to the post of RTM and further while deciding issue no.6, categorically stated the cause of action to be still continuing as the appellant/plaintiff is suffering recurring loss every month in his salary, allowances, increments because of the discrimination being faced with other employees who were appointed as RTM on compassionate grounds with same educational qualification as that of appellant/plaintiff. While deciding issue No.1 and 2 in favour of the appellant/plaintiff, the decree for mandatory injunction was granted.

7. The said judgment and decree dated 29.05.2012 was challenged before the Court of Additional District Judge, Fast Track Court, Hoshiarpur by respondents no.1 to 5/ defendants no.1 to 5 by way of filing Civil Appeal under Section 96 of Civil Procedure Code. The appeal was allowed vide order dated 25.11.2014 dissenting with the judgment and decree passed by the trial Court and now the Regular Second Appeal has come up against the judgment dated 25.12.2014, according to which the appellant/petitioner is not entitled to the post of RTM as the suit filed is time barred.

8. It is contended assailing the judgment and decree passed by the Appellate court below that the plaintiff/appellant proved his bias appointment despite the fact that he was also having the same qualification like other dependents who were appointed during the same tenure but the Appellate court below did not acknowledge the same fact.

9. Learned counsel for the appellant would also assert that as far as the question of limitation is concerned, it is a continuing cause of action since the plaintiff/appellant had been approaching the defendant/respondent department time and again representing his grievance which was refused and thereafter the appellant approached the court of law, thus his prayer is well within the period of limitation.

10. Learned counsel for the appellant also submits that the trial court had only issued directions to the respondent department to look into the representation of the appellant and rather no other relief was granted therefore, the appeal filed by the respondent department in the Appellate court below did not carry any cause of action.

11. The learned counsel appearing through hybrid mode for respondent department justifies the legality of impugned judgment and

decree passed by the Appellate court below stating that the plaintiff/appellant was offered job of work charge T-mate which he gladly accepted and started working on the said job w.e.f 21.05.1997 so now he is estopped by his act and conduct. It is further submitted that the plaintiff/appellant joined the post of work charge T-mate on 21.05.1997 and the suit was filed on 27.07.2005 which is hopelessly barred by limitation as it is a settled principle of law that limitation for declaration and mandatory injunction is 3 years.

12. She would assert that the other dependants during that period were appointed as R.TM. on compassionate grounds and it has no relevancy with the case of the plaintiff/appellant therefore he has not suffered any loss.

13. Heard, learned counsel for the parties.

14. The law of limitation is founded on public policy. It is enshrined in the legal maxim “ *interest reipublicae ut sit finis litium* ” i.e it is for the general welfare that a period of limitation be put to litigation. The object is to put an end to every legal remedy and to have a fixed period of life for every litigation as it is futile to keep any litigation or dispute pending indefinitely. Even public policy requires that there should be an end to the litigation otherwise it would be a dichotomy if the litigation is made immoral vis-a-vis the litigating parties who are mortals.

15. Having perused the record and after going through the evidence put forth before this Court from the record of Appellate Court below, it is very much evident that the plaintiff/appellant got his post of work charge T-mate on compassionate grounds on 21.05.1997 and thereafter, he filed the suit for mandatory injunction on 27.07.2005 i.e after good 8 years. However, the suit for declaration and mandatory injunction

should have been filed by him within 3 years from the date when he was offered to the post of work charge T-mate by the respondent department.

16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. A result flowing from a statutory provision is never an evil. A court has no power to ignore the provision to relieve what it considers a distress resulting from its operation. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means the “law is hard but it is the law”, stands attracted in such a situation.

17. The Apex Court in “***S.S. Balu And Anr vs State Of Kerala And Ors, AIR 2009 SUPREME COURT 1994***” while citing a case titled “***New Delhi Municipal Council vs Pan Singh (2007) 9 SCC 278***” has held that:-

"16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction

may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction."

18. Therefore, taking into consideration the facts of the instant case and the spectrum of law discussed herein above, I am of the considered view that the suit of the plaintiff/appellant does not fall within the limitation period just because the loss to him is still continuing and recurring one. Further, when the plaintiff/appellant had himself joined the post of work charge T-mate without raising any protest, then it cannot be said that he has been suffering loss continuously. Moreover, the suit filed by him is barred by law of estoppel or in other words, when the plaintiff/appellant had elected to join at one post, then as per doctrine of election, he cannot approbate and reprobate.

19. To be elaborative, the principle of estoppel generally prevents from claiming something that contradicts a previous statement or action that induced another party to act to their detriment. In the context of higher post, if an individual previously indicated acceptance of a lower position or otherwise acted in a way that led others to believe they would not seek a higher role, they may be estopped from later claiming a higher post.

20. Moreover, as per the averment of the Respondent corporation, the department was not bound to provide compassionate job to the appellant/petitioner but was granted only on the basis of sympathetic grounds. It is to be borne in mind that Compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependants of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration, taking into consideration the fact

that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give such family a post much less a post held by the deceased.

21. Taking into consideration the facts of the instant petition where the suit for mandatory injunction had been filed after 8 years which is clearly barred by limitation and the settled proposition of law discussed herein above, this court held that the plaintiff/appellant is not entitled to get the relief of declaration and mandatory injunction as prayed for and therefore, upholds the findings of the lower Appellate court.

22. Accordingly, the present Regular Second Appeal stands dismissed and judgment and decree dated 25.11.2014 passed by the Lower Appellate Court is hereby upheld.

23. The decree-sheet be prepared accordingly.

(SANDEEP MOUDGIL)
JUDGE

14.01.2025

Meenu

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No