

2025:PHHC:072946



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

RSA-432-2015

DECIDED ON: 13.01.2025

STATE OF PUNJAB AND ANR.

.....APPELLANTS

VERSUS

RAM SINGH DRIVER

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Jaspal Singh Guru, AAG Punjab

Mr. Vijay Lath, Advocate for respondent

SANDEEP MOUDGIL, J

1. The present Regular Second Appeal preferred by the State of Punjab/defendant is against the judgment and decree dated 02.05.2014 passed by the Civil Judge (Jr. Division), Jalandhar and dated 26.08.2014 passed by the District Judge, Jalandhar, whereby the suit has been partly decreed in favour of the plaintiff/respondent holding that there is no justification in denying the Annual Grade Increments for the period beginning from 01.12.2000 onwards.

2. Learned counsel has also granted ancillary to the plaintiff alongwith proficiency step-up of 8 and 16 years of service as well as three grade increments during the year 2001 to 2003 to which the plaintiff became entitled.

3. The State of Punjab through the General Manager, Punjab Roadways, Jalandhar challenged the said judgment and decree dated 26.08.2014 passed by the First Appellate Court which in addition to the trial

Court decree dated 02.05.2014 who went on to hold further that the plaintiff /respondent cannot be deprived of his entitlement to receive benefit of proficiency step-up after completion of 8 years, 16 years and 24 years solely on the ground that his reports were "Average", which were not even communicated to the plaintiff/respondent.

4. The appellant-State has assailed the judgment and decree passed by the trial Court as well as of the first Appellate Court, urging that the plaintiff/respondent is not entitled to the relief as granted by the Civil Judge (Jr. Division), Jalandhar on the following grounds:-

i. Despite having knowledge of the fact that ACRs for the year 1985-86 to 2000-01 were average, who also opted to remain absent from duty during the year 2001-02 and 2002-03, did not make any representation and as such law of estoppel would apply to the civil suit;

(ii) The civil suit has been filed after a period of limitation as for the relief which became due to him in the year 1992 as alleged on completion of eight years, and other reliefs, the suit was instituted on 30.12.2011;

(iii) In any case arrears of pay cannot be legally claimed beyond 38 months preceding to the filing of suit being hit by law of limitation;

5. Before proceeding to the examination of above question of law raised by the State of Punjab-appellant, a magnified understanding of facts involved need to be given a look, which could be culminated as under:-

6. The plaintiff/respondent was working as a Driver with Punjab Roadways, Depot No.2, Jalandhar after his appointment w.e.f. 02.03.1984. His services are governed by the Punjab Civil Services Rules and instructions issued from time to time by the Administrative Department, Government of

Punjab. He retired as such on attaining the age of superannuation on 31.05.2008.

7. A notice was served by the plaintiff/respondent dated 13.11.2009 claiming first proficiency step-up on completion of 8 years service in the year 1993 alongwith second proficiency step-up on completion of 16 years of service in the year 2001, clarifying that he was under bona fide mistaken belief that he was appointed as a Driver in the year 1985 but had actually joined the service in the year 1984.

8. The said legal notice was not responded by the appellant-State of Punjab, which resulted into filing of a civil suit for declaration claiming the following:-

- a. first proficiency step up after the completion of 8 years of service in the year 1992
- b. second proficiency step up in the proficiency step up in the year 2000 after the completion of 16 years of service and
- c. third proficiency step up in the year 2008 after completion of 24 years of service and
- d. three annual grade increments during the year 2001 to 2003 with consequential benefits like arrears of pay during service and pensionary benefits such as commuted pension, gratuity, leave encashment and provident fund.

Contentions:-

9. The appellant-State/defendants in its submissions before this Court took a stand that though the plaintiff/respondent was appointed as a Driver on 02.03.1984 but is not entitled to claim two proficiency step up having bad service record. Apart from that it is the case set up by the appellant/State of Punjab that the period of 3 years, 10 months and 20 days of

his service i.e., from 06.12.2000 to 19.05.2003 was treated as non-qualifying service on account of his remaining absent from duty for that phase.

10. The decree by both the Courts below suit is also objected to arguing that suit in itself is barred by limitation and also for the reason that the petitioner has received his salary every month and, as such, now cannot stand up to say that the fact of non-grant of ACP to him as and when he became entitled to it earlier was not in his knowledge.

11. The appellant/State of Punjab has also referred to the ACRs for the year 1985-86 to 2002-03 that all ACRs are reported as 'average' and in the last two years he remained absent from duty. Lastly it is the case of appellant-State that proficiency step up can be allowed as per Government Notification dated 10.01.2000 and since the plaintiff-respondent is getting pension at the revised rates, is not entitled to any interest whatsoever in strict compliance to the judgment and decree dated 16.09.2008.

12. Mr. Guru closing the submissions prayed for acceptance of instant Regular Second Appeal.

13. Mr. Vijay Lath, Advocate for plaintiff/respondent submits that a legal notice under Section 80 CPC dated 13.11.2009 was served upon the appellant/defendants seeking grant of first proficiency step ups on the completion of 8 years service in the year 1993 and second proficiency step up on the completion of 16 years service in the year 2001.

14. It is also argued that the plaintiff/respondent, under a *bona fide* and mistaken belief that he had been appointed as a Driver in the year 1985, whereas, in fact, his appointment was made in 1984 and as such, he has been granted lesser pay during his service tenure with reduced pension upon superannuation and no heed was paid to the aforesaid legal notice.

15. It is further asserted that the appellant/defendants in their written statement admitted that the plaintiff/respondent was appointed as a Driver in the Roadways on 02.03.1984, and not in the year 1985 as was previously believed but still they have taken the stand that the plaintiff/respondent is not entitled to the grant of the two proficiency step-ups, alleging that his service record was unsatisfactory. It is also contended that the appellant/defendants are wrong in now pleading that 3 years, 10 months, and 20 day commencing from 06.12.2000 to 19.05.2003 was treated as non-qualifying service, as he was marked absent from duty during that, wherein the plaintiff/respondent never absented from duty during the alleged period from 06.12.2000 to 19.05.2003. It is also submitted that such adverse action against the plaintiff/respondent was never conveyed to him about which he came to know only on receiving a copy of his service book. Mr. Lath states that it was on account of defect in his eyesight he could not perform his duty as a driver and had he been absent he might have issued with show cause notice or disciplinary proceedings ought to have been initiated, but it is not the case of the appellant/defendants.

16. It is further averred that the alleged annual confidential reports were never communicated to the plaintiff/respondent during service and even thereafter on attaining superannuation. Mr. Lath would submit that now taking such alleged average ACRs adverse to the interest of the plaintiff/respondent is violation of principle of natural justice and punishment flouting the very essence of *Audi Alteran Partem* with impunity and as such, the said action on the part of the appellant/defendants was rightly held illegal and the suit of respondent/plaintiff was partly decreed by both the Courts below.

17. Heard learned counsel for the respective parties.

Discussions:-

18. Following questions of law have arisen after giving a thoughtful consideration to the submissions and the evidence placed before this Court on behalf of both the parties:-

(i) the suit is barred by limitation

(ii) the plaintiff/respondent is not entitled to the relief suit for bad ACRs during the service period 1985-86 to 2000-01 and as such law of estoppel would arise since he never questioned the said ACRs

(iii) As per the settled law in any case the plaintiff/respondent cannot be granted arrears beyond 38 months preceding to the date of institution of suit.

19. Going by finding written by the trial Court as well as by the Lower Appellate Court, it is evident that the question of limitation was not pressed at the time of arguments and the same was decided against the defendants/appellants and in favour of the plaintiff/respondent. However, even otherwise, the claim qua the three proficiency step-ups accrued to the plaintiff/respondent in the year 1992, 2000 and 2008. It is an admitted fact on behalf of the appellant/defendants-State of Punjab that a legal notice was served by the plaintiff/respondent dated 13.11.2009, but the same was never responded and decided by the Department/appellant. It would be thus safe for this Court to conclude that the plaintiff/respondent was not sleeping over the issue, but was vigilant enough qua his rights, who was not conveyed the report of ACRs, which were recorded as 'Average' and as such did not have the knowledge at all as to on what ground justifiable claim could be declined. Moreover it is a recurring cause of action causing financial loss to a Government employee, which is his legitimate due on account of serving the State Government and is not merely a bounty of which he can be deprived off

on technical grounds. It was otherwise also incumbent upon the appellant/defendants that once an employee becomes entitled particularly to a financial benefit like proficiency step up on completion of 8 years and 16 years of service under the Service Rules vide which his services are governed and framed by the State of Punjab itself, to consider the case at that time and to release the said benefit subject to being eligible. In the instant case it was other way around wherein the appellant/defendant not only failed to consider the step up of proficiency at the appropriate time i.e., to say in the year 1992, 2000 and 2008, but also did not consider the case and reply back to the legal notice which was admittedly received by the Department on 13.11.2009.

20. The most noticeable fact would be to adjudicate the issue of limitation is the date of instituting the civil suit in question which was 20th December 2011 i.e., within three years from the date of issuance of legal notice by the plaintiff/respondent. Hence the Civil suit was within three years the stipulated period prescribed under the Limitation Act, 1963 and this question is decided in favour of the plaintiff/respondent and against the appellants/defendants.

21. Question No.3 raised before this Court to adjudicate is now whether is actually inter-connected to the question No.1 and the same is therefore decided together here itself i.e., whether plaintiff/respondent can be granted arrears beyond 38 months preceding to the date of institution of suit.

22. Once the question of limitation is adjudicated in favour of the plaintiff/respondent, who has been fighting for his right as claimed in the instant suit for declaration without any delay as per law, he cannot be deprived of his legitimate financial dues for a specified period beyond 38 months.

23. Coming to the 3rd contention the most pressed argument came on behalf of the appellants/defendants to the fact is that adverse entries are not necessarily to be communicated is also to be negated as per settled law as enunciated by the Hon'ble Apex Court in ***Dev Dutt vs. Union of India and Ors., 2008(3) SCT 429 (SC)***, wherein it was observed as under:-

“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 non-arbitrariness 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.

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 non-communication would be arbitrary, and as such violative of [Article 14](#) of the Constitution.”

24. Further dependence can also be placed upon on the judgment rendered by the Apex Court in ***Sukhdev Singh vs. Union of India, 2013 AIR (SCW) 3801*** wherein it was observed as under:-

“In our opinion, the view taken in Dev Dutt that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR – poor, fair, average, good or very good – must be communicated to him/her within a reasonable period.”

25. In the instant case, it is an admitted fact that Annual Confidential Report for the years 1985-86 to 2002-03 and 2006-07, which were average as well as with the remark “absent from duty” have not been communicated to the plaintiff/respondent.

26. Having given a considerable thought which finds support from the earlier judicial pronouncements as discussed hereinabove, I hereby hold that the Annual Confidential Report of the plaintiff must have been communicated to him and failure to do so has disabled him on three fronts such as:-

- (i) If ACR brought to his knowledge he would have a chance to work hard and achieve more to improve his performance for yielding better results,
- (ii) It is also pertinent to communicate such ACRs to a public servant, who should have been given an opportunity of explaining himself seeking upgradation of remarks already entered in the questioned ACRs, &
- (iii) It brings in transparency and fairness making the administrative functioning more confirming and uniform with the principles of natural justice.

27. Keeping in view the above made observations that the adverse entries were never communicated by the authorities concerned/State, this Court finds no justification in denying the benefits, which has rightly been granted to the respondent by the trial Courts below.

28. Hence, the Regular Second Appeal is hereby dismissed with no order as to costs and the judgment and decree dated 02.05.2014 passed by the Civil Judge (Jr. Division), Jalandhar and dated 26.08.2014 passed by the District Judge, Jalandhar, are hereby upheld.

29. Pending application(s), if any shall be disposed off, accordingly.

(SANDEEP MOUDGIL)
JUDGE

13.01.2025

Meenu

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>