

(2013) 08 P&amp;H CK 0752

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Regular Second Appeal No. 3630 of 2011

Dalbir Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

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**Date of Decision:** Aug. 14, 2013**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 2 Rule 2, Order 20 Rule 5

**Hon'ble Judges:** Rakesh Kumar Garg, J**Bench:** Single Bench**Advocate:** R.K. Arya, for the Appellant;**Final Decision:** Dismissed

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**Judgement**

Rakesh Kumar Garg, J.

This is plaintiff's second appeal challenging the judgments and decrees of the courts below whereby his suit for mandatory injunction directing the respondents to consider his claim for promotion as Sub-Inspector from the due date on the basis of entry in promotion List-E for entry in Promotion List-F and further promotion as Inspector of Police was dismissed. As per the pleadings, appellant was appointed as Constable in PAP (Punjab Arms and Police) on 5.7.1982 and was promoted as ASI (Assistant Sub Inspector). Thereafter, he qualified Upper School Course along with others in the term ending May 1993. His name was brought on Promotion list-E w.e.f. 1.6.1993. He was required to be considered for promotion as SI (Sub Inspector) but was not considered whereas other officers were given promotion and in this way, appellant was made to suffer in seniority.

2. According to the appellant, he was dismissed from service by SSP, Hoshiarpur vide order dated 24.1.1996 and his appeal against the said order was also dismissed. Thereafter appellant filed a civil suit which was partly decreed to the extent that the impugned order of dismissal of appeal was held illegal. The case was remanded back to the punishing authority and thus appellant was entitled to be considered for

promotion as Sub-Inspector from the date from which defendant nos. 5 & 6 now respondents nos. 5 & 6 were promoted as sub-Inspectors.

3. Upon notice, respondents no. 5 & 6 did not appear and were proceeded against ex parte.

4. Defendant/respondents no. 3 & 4 filed joint written statement contesting the claim of the appellant stating that the appellant was enlisted as Constable in PAP on 5.7.1982 and was promoted as ad hoc constable on 6.9.1994. Thereafter he was confirmed as Head Constable w.e.f. 7.6.1988 and was granted List-D w.e.f. 1.10.1988 and thereafter was promoted as officiating ASI on 10.1.1989. However, appellant remained absent and as such after conducting departmental enquiry as per rules, he was dismissed from service. It was further stated that the Civil Court had granted relief to the appellant only for consideration of his case for pension on sympathetic grounds and his claim for reinstatement was rejected. It was further asserted that the plaintiff had no claim for promotion due to his bad record. Prayer for dismissal of the suit was made.

5. While dismissing the suit, the trial Court found that the plaintiff has failed to prove that he has become entitled to promotion on the ground that he has passed Upper School Course and it was found that only suitable candidates were promoted and appellant was not promoted due to his bad record. Hence it was held that appellant was not entitled to the mandatory injunction as claimed.

6. The appeal filed by his appellant against the judgment and decree of the trial Court was also dismissed. The relevant observations of the lower appellate Court reads thus:

12. It is admitted that due to absence from duty, the plaintiff was dismissed from the service. He filed a civil suit which was decided by the Court of Shri Sanjay Agnihotri, Id. Civil Judge (Jr. Divn.), Gurdaspur vide judgment and decree dated 15.10.2003 to consider the pension case only for sympathetic ground and his prayer for reinstate was declined and there is nothing on record to show that any appeal/revision has been preferred by the present appellant against the judgment and decree passed by Id. Lower Court dated 15.10.2003 and the said order gained finality. As per version of the respondent ASI Dalbir Singh 679/PAP was enlisted as constable on 5.7.1982, promoted as Head constable on 6.9.1984, confirmed as Head constable on 7.6.1988 granted list "B" w.e.f. 1.10.1988 and promoted as Officiating ASI on 10.1.1989 and he qualified upper school course alongwith other AS/s Subhash Chander (now inspector). The appellant was relieved on transfer from Commando formation to Jalandhar Range (Distt. Hoshiarpur) vide ADGP/Armed Bns. Jalandhar Cantt. Memo No. 10045-64/CB-PC dated 16.6.1993 in compliance with Director General of Police, Punjab, Chandigarh Endst. No. 16298/E-3 dated 8.6.1993 where he remained absent from duty from period 1.12.1994 to 20.12.1994, 20 days then 23.02.1995, 20 days total period of 63 days 6 hours and 45 and thereafter,

inquiry was conducted as per rules, and plaintiff/appellant was dismissed from his service vide order no. 5538-44 dated 24.1.1996 of the Senior Superintendent of Police, Hoshiarpur. He preferred appeal which was also dismissed by the DIG, Jalandhar. Thereafter, he filed a civil suit which was decided vide judgment dated 15.10.2003 passed by Id. Civil Judge (Jr. Divn.) in which only the relief was granted that his case of pension be considered sympathetically and remaining relief has been declined and there is no appeal preferred by the present appellant against that order. Though the counsel for the appellant has contended that the promotion of other employees was not within his knowledge at the time of filing of the earlier suit but the argument so raised by counsel for the appellant is devoid of any force especially in the circumstances when Dalbir Singh appellant himself admitted in the cross-examination "Ranjit Singh and Subhash Chander was promoted as Sub Inspectors in the year 1994-95. I came to know this fact that at that time but I was dismissed from service at that time by the department. Volunteered after that I won the case. Again said this fact was known to me later on at the time of filing the suit. Ranjit Singh was in PAP when he was promoted as Sub Inspector, Subhash Chander was posted as Sub Inspector in Border Range in the year 1994-95. So there lines from the cross-examination of appellant himself shows that he has got the knowledge with regard to the promotion in the year 1994-95 but he has stated that at that time he was dismissed from service and he challenged the dismissal order in the civil Court on 15.6.1996 and that suit was decided on 15.10.2003 as proved on record certificate copy of judgment Ex. D-3 and he never claimed the relief as claimed in the present suit especially in the circumstances when he was having knowledge that other employees stand promoted and he has not been considered for promotion and he has filed the present suit claiming this relief on 19.11.2004 i.e. after a lapse of about 10 years which is certainly not admissible in law and more so far as jurisdiction is concerned, through the counsel for the appellant has contended that he resides at Gurdaspur, hence he has got cause of action to file the present suit but the Id. Lower Court has rightly held that he was dismissed from the service from Hoshiarpur and earlier suit was filed at Gurdaspur as he received certain letters at Gurdaspur but in the instant case neither any documentary proof to show that he received any document at this place. So the Id. Lower Court has rightly held that Court at Gurdaspur has no jurisdiction. Hence this Court is constrained to hold that there is nothing on record to interfere in the well reasoned findings rendered by the Id. Lower Court in the judgment and decree under appeal and the same are liable to be affirmed and the appeal filed by the appellant is liable to be dismissed.

7. Still not satisfied the appellant has filed the instant appeal challenging the judgments and decrees of the Courts below submitting that the following substantial questions of law arises in this appeal for consideration of this Court:

1) Whether the appellate Court sought to decided each issue separately under Order XX Rule 5 of CPC?

2) Whether the Id. Below Courts have committed error by exceeding their jurisdiction while exercising the power of discipline authority and recorded the finding that the appellant was not entitled for consideration of promotion?

8. I have heard the learned counsel for the appellant and perused the impugned judgments and decrees of the courts below.

9. Admittedly, plaintiff-appellant was dismissed from service. He had challenged the said order in the Civil Court. The civil suit was decided on 15.10.2003 (Ex. D-3) wherein his claim for reinstatement was declined and moreover both the Courts below on appreciation of evidence have found that the appellant has failed to prove that he was entitled to promotion on the ground that he has passed Upper School Course. It may further be noticed that appellant was dismissed from service on 24.1.1996 and according to him, right for consideration for promotion accrued to him in the year 1993 but appellant failed to claim his right till his dismissal on 24.1.1996 and even till 17.3.2004 when he was ordered to be retired w.e.f. 24.1.1996, thus the instant suit filed on 19.11.2004 is clearly time barred having been filed after 10 years of the alleged accrual of right.

10. Not only this, the suit of the appellant is further hit by the provisions of Order 2 Rule 2 CPC, as admittedly he could have claimed the relief in the Civil suit filed by him while challenging his dismissal order.

11. In view thereof, this Court finds no merit in this appeal and no substantial questions of law, as raised, arises in this appeal. Dismissed.