(2006) 3 CGLJ 14

Chhattisgarh High Court

Case No: Second Appeal No. 545 of 1999

Municipal Corporation Durg		APPELLANT
	Vs	
Shri Satish Kumar Mishra		RESPONDENT

Date of Decision: Aug. 2, 2005

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100
- Limitation Act, 1963 - Article 58, 22

Citation: (2006) 3 CGLJ 14

Hon'ble Judges: Vijay Kumar Shrivastava, J

Bench: Division Bench

Advocate: Avinash Mishra, for the Appellant; Alok Bakshi, for the Respondent

Final Decision: Allowed

Judgement

V.K. Shrivastava, J.
This Second appeal has been directed against the judgment and decree dated 18.01.1999, passed by the 3rd Additional District Judge, Durg in Civil Appeal No. 14A/96, setting aside the judgment and decree dated 14.02.1996 passed by the Civil Judge Class I Durg in case No. 50A/93.

2. Plaintiff was appointed as LDC in the establishment of Defendant on 19.11.1981 and since then he is in service. The Defendant regularized his services on 30.05.1984. Neither in the appointment letter dated 19.11.1981 nor in the regularization letter, dated 30.05.1984 any condition regarding qualifying typing examination was imposed. Despite that Defendant withheld annual increment and other service benefits of the Plaintiff. Therefore, Plaintiff on 21.08.93 filed a suit for declaration alleging the appointment order dated 19.11.1981 or 30.05.1984, no condition has been imposed against the Plaintiff to pass Hindi typing examination and in that garb of un-qualifying the typing examination,

withholding his increment, seniority and other service benefits, is illegal.

3. Defendant denied the claim of Plaintiff on the ground that for the post of LDC, qualification required is Higher Secondary and Hindi typing, apart from that the suit filed by the Plaintiff is time barred.

4. The trial court after evaluating the evidence on record held that Plaintiff is entitled for annual increment and other service benefits since 19.11.1981 and on the garb of non-qualification of Hindi typing examination, his annual increment cannot be withheld. Learned trial Court held that although Plaintiff is entitled for benefits, yet he did not file his suit within time and therefore, dismissed the suit as barred by limitation. Plaintiff aggrieved by the judgment and decree passed by the trial Court preferred an appeal. The appeal was registered as appeal No. 14A/96. The 3rd Additional District Judge, Durg, after hearing both the parties, considering all the facts and law, held the suit as not barred by law of limitation and instead granting simple declaration, decreed that Defendant shall allow annual increment and other service benefits to the Plaintiff since 19.11.1981.

5. Defendant, on substantial question of law, preferred this Second appeal u/s 100 of the CPC against impugned judgment and decree passed by the First Appellate Court. This Court on the following substantial questions of law has admitted the appeal for hearing:

(1) Whether the suit of the Plaintiff was barred by limitation?

(2) Whether the Appellate Court was justified in granting the decree for award of increment and other ancillary benefits, when the Plaintiff simply prayed for a declaratory decree after deleting the relief regarding the increment and the ancillary benefits.

6. Both the parties are heard. Record of lower Court perused.

7. Admittedly, Plaintiff is an employee of Defendant, who has been appointed as LDC on 19.11.1981 and since then, he is continuing his service. His services have been regularized vide order dated 30.05.1984. Admittedly, in both the orders, no condition had ever been imposed by the Defendant that only on qualifying Hindi typing examination; the Plaintiff would be entitled for increment or other service benefits. Lower Court has already held that Plaintiff is entitled for annual increment and other service benefits since 19.11.1981 and on the garb of non-qualifying Hindi typing examination, his annual increment cannot be withheld. These findings have not been challenged by the Defendant by cross objection or appeal before the Appellate Court. Therefore, both the findings of the trial Court have reached its finality and cannot be challenged now. From those findings, it is apparent, that, Defendant, by disallowing the benefit of increment and other service benefits, is continuing wrong against the Plaintiff on each day and each moment. Therefore, the suit shall be governed by the provision of Section 22 and Article 58, of the Limitation Act 1963, wrong is continuing; therefore, period of limitation still continues and is not seized. Learned trial Court ignored the provision of Section 22 of the Limitation Act and held the suit barred by time. Learned First Appellate Court held the suit within time on

the contention raised by the Plaintiff that cause of action is continuously accruing; I am of the opinion that the cause of action is continuous and therefore, the suit filed by the Plaintiff is not barred by the law of limitation and accordingly question No. 1 is answered.

8. Plaintiff in para 9 a & b prayed for allowing the relief:

9. First/Appellate Court, vide judgment and decree dated 18.01.1999 in para 13 has passed the following order:

10. Plaintiff has filed suit only for declaration. Therefore, if he succeeds, he L; entitled for the relief prayed for. Wherein First Appellate Court instead of declaration, has passed an order for allowing annual increment and other service benefits, which are not permissible. Accordingly, question No. 2 is answered.

11. In the result, the appeal partly succeeds. Instead of judgment and decree passed by the First Appellate Court that Defendant is directed to pay the Plaintiff annual increment and other service benefits from the date of appointment i.e. 19.11.1981, the decree shall be:ï¿½ "It is declared that withholding annual increment, seniority and other service benefits in the garb of non qualifying Hindi typing examination, which is not a condition imposed in the order dated 19.11.1981 or 30.05.1984, is illegal."

12. Parties to bear their own costs.