

(2011) 05 GUJ CK 0139
In the Gujarat High Court
Case No : Second Appeal No. 129 of 1997

State of Gujarat and Others	Vs	APPELLANT
Savitaben Hirajibhai		RESPONDENT

Date of Decision : 05-05-2011

Acts Referred:

Limitation Act, 1963 — Section 3

Citation : (2011) 05 GUJ CK 0139

Hon'ble Judges : K.S. Jhaveri, J

Bench : Single Bench

Advocate : C.M. Shah, Asst. Government Pleaders 1 - 3, for the Appellant;
Sangeeta N. Pahwa, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—By way of present appeal, the Appellants have challenged the legality and validity of the judgment and order dated 23rd April 1997 passed by the Assistant Judge, Bhavnagar in Regular Civil Appeal No. 171 of 1995, confirming the judgment and decree dated 29th September 1995 passed by the Civil Judge (Senior Division), Bhavnagar in Regular Civil Suit No. 616 of 1987.

2. The brief facts giving rise to the present appeal are that the Respondent was serving as an unarmed lady Police Constable with effect from the year 1977 under the Appellant No. 3. As per the case of the Respondent before the Courts below, she is entitled to be promoted to the post of Head Constable since the year 1977. Hence, she submitted an application dated 01st January 1985 to the Appellant No. 3 and subsequently also made applications. However, all in vain and, therefore, she filed Regular Civil Suit No. 616 of 1987 before the Civil Judge (Senior Division), Bhavnagar. The trial Court after hearing the parties has decreed the suit vide impugned judgment and decree dated 29th September 1995.

2.1 Being aggrieved by the said judgment and decree, the Appellants herein

preferred Regular Civil Appeal No. 171 of 1995, which ultimately came to be dismissed vide impugned judgment and order dated 23rd April 1997 passed by the Assistant Judge, Bhavnagar, confirming the judgment and decree passed by the trial Court. Hence, present appeal.

3. Present appeal has been admitted for hearing the parties on the following substantial question of law:

Whether the suit filed by the Respondent in 1987 claiming her promotion is stood barred by law of limitation, delay and latches especially in view of the fact that juniors to her were promoted?

4. Having considered the rival contentions raised by the learned advocates for the respective parties, the documentary evidence produced on record and the impugned judgments and decrees as well as the substantial question of law, it transpires that the Courts below have after going through the relevant aspects of the matter rightly come to the impugned conclusion, which is just and proper. So far as the aforesaid issue is concerned, Mrs. Sangeeta Pahwa, learned advocate for the Respondent, has relied upon a decision of the Apex Court in the case of Banarsi Das Vs. Seth Kanshi Ram and Others, whereby it is held that the question of limitation was not one purely of law but was a mixed question of fact and law. Here it would be beneficial to reproduce the relevant paragraph of the said decision as under:

15. The High Court has overlooked the fact that even upon the argument addressed before it on behalf of Kanshi Rain, the question of limitation was not one purely of law but was a mixed question of fact and law and, therefore, it was not proper for it to allow it to be raised for the first time in argument. We are satisfied that what the High Court has done has caused prejudice to some of the parties to the suit and on that ground alone, we would be justified in setting aside its decision. If the High Court felt overwhelmed by the provisions of Section 3 of the limitation Act, it should at least have given an opportunity to the parties which supported the decree of the trial court to meet the plea of limitation by amending their pleadings. After allowing the pleadings to be amended, the High Court should have framed an issue and remitted it for a finding to the trial Court. Instead of doing so, it has chosen to treat the pleading of one of the Defendants as conclusive not only on the question of fact but also on the question of law and dismissed the suit. It is quite possible that had an opportunity been given to the Defendants, they could have established, in addition to proving the dates on which the summonses were served, that the suit was not barred by time because of acknowledgment in the course of the discussion, the High Court had said that it was not suggested before it by anyone that the claim was not barred by reason of acknowledgments. Apparently, no such argument was advance before it on behalf of the Plaintiff and the Defendant Banarsidas because the counsel were apparently taken by surprise and had no opportunity to obtain instructions on this aspect of the case. We are clearly of opinion that the High Court was in error in allowing the plea of limitation to be raised before it particularly by Defendants

who had not even filed a written statement in the case. We do not think that this was a fit case for permitting an entirely new point to be raised by a non-contesting party to the suit.

5. In view of aforesaid and applying the aforesaid ratio of the above cited decision in the present case, I am of the opinion that the Courts below have assigned cogent and convincing reasons for arriving at the conclusion. Over and above the aforesaid reasons, I adopt the reasons assigned by the Courts below and do not find any illegality much less any perversity in the findings recorded. I am in complete agreement with the findings recorded by the Courts below. No case is made out to interfere with the findings recorded by the Courts below. Hence, present appeal deserves to be dismissed.

6. For the foregoing reasons, present appeal fails and is, accordingly, dismissed. No order as to costs. Decree be drawn accordingly.

7. It is, however, clarified that the juniors to the Respondent who are already promoted will not be disturbed while granting promotion to the Respondent and the Respondent be granted all the admissible monetary benefits.