
(1996) 10 P&H CK 0120

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1302 of 1993

The State of Punjab and Others

APPELLANT

Vs

Gurdial Singh

RESPONDENT

Date of Decision : 14-10-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (1997) 115 PLR 446

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : Tarunvir Vashisht, AAG, for the Appellant; H.S. Mann, for the Respondent

Final Decision : Dismissed

Judgement

Sat Pal, J.—This appeal is directed against the judgment dated 21st July, 1992 passed by Additional Senior Sub Judge, Kapurthala, and the judgment dated 25th January, 1993, passed by the Additional District Judge, Kapurthala.

2. Briefly stated, the facts of the case are that the plaintiff joined the Police Department at Hoshiarpur in 1961 and he was absorbed in the Clerical cadre (English Branch). He was promoted as officiating Constable in the Executive Clerical Cadre (English Branch) with effect from 11th February, 1973. He was placed on probation for a period of two years as officiating Head Constable. However, after the expiry of the said two years, he was not confirmed as Head Constable though the juniors to the plaintiff were confirmed. Finally, he was confirmed as Head Constable on 1st January, 1988. Vide orders, dated 21st April, 1988, juniors to the plaintiff were promoted as Officiating Assistant Sub Inspectors in the executive clerical cadre but the plaintiff was ignored. Aggrieved by the orders of the promotion of his juniors, the plaintiff submitted representation which was rejected. Thereafter, he served a notice u/s 80, CPC (in short CPC). Since despite the service of the said notice, he was not granted relief, the plaintiff filed a suit for declaration on 29th October, 1988 and in this

suit it was prayed that decree be passed to the effect that the orders dated 21st April, 1988 promoting the junior most persons than the plaintiff were illegal, void, arbitrary and unconstitutional and against the provisions of the Punjab Police Rules. It was further prayed that the plaintiff be promoted with effect from the date when his juniors were promoted with all the consequential benefits attached to the post. The suit of the plaintiff was decreed by the learned trial Court by his judgment, dated 21st July, 1992, in the following terms:-

"In view of my findings on various issues a decree for mandatory injunction directing the defendants to consider the case of the plaintiff for promotion to the post of Ass!".. Sub-Inspector from the post of Head-Constable Executive Clerical Cadre by giving his seniority as on 11.2.73 within three months from the date of this order, is passed in favour of the plaintiff and against the defendants."

3. Aggrieved by the judgment, dated 21st July, 1992, passed by the learned trial Court, the State filed an appeal which was dismissed by the learned Additional District Judge, Kapurthala vide his judgment dated 25th January, 1993. Aggrieved by the aforesaid two judgments, the present appeal has been filed by the State.

4. Mr. Tarun Vashisht, learned AAG appearing on behalf of the State, has raised two points. Firstly he submitted that the suit of the plaintiff was liable to be dismissed on the ground of non-joinder of necessary party. In this connection, he drew my attention to preliminary objection No. 2 of the written statement filed before the learned trial Court which reads as under:-

"That the suit is bad for nonjoining the necessary party. Adverse report of the plaintiff was given by the S.S.P. Hoshiarpur. He is not pleaded as necessary party."

In support of his submission, he placed reliance on a judgment of this Court in case, Pritam Singh and Others Vs. The State of Punjab and Others, , Secondly, the learned AAG submitted that the suit itself was barred by limitation and ought to have been dismissed on this ground. In support of this submission, he placed reliance on a judgment of the Supreme Court in the State of Punjab v. Grudev Singh AIR 1981 SC 2219.

5. Mr. Mann, learned counsel appearing on behalf of the respondent, submitted with regard to the objection taken by the State in preliminary objection No. 2 that the SSP Hoshiarpur was not made a party though he was the necessary party, that the plaintiff had not claimed any relief against the SSP Hoshiarpur and as such he was not a necessary party. On the second point, the learned counsel submitted that the point of limitation is a point of facts and law and since this point was not raised before the learned trial court, the appellant-State cannot be permitted to take this point at this stage.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties and have perused the records. From the records,

its is clear that the point of limitation was not raised in the written statement filed on behalf of the State. The point of limitation definitely involves certain facts as to on which date the cause of action arose and as to from which date the limitation will start. Since this point was not raised either before the learned trial Court or even before the first appellate court, the appellant State cannot be permitted to raise this point and that too in a vague manner. Accordingly, the contention of the learned AAG on this point is rejected. As regards the non-joinder of necessary part, from the written statement I find that this point was taken on behalf of the State only with regard to non-joining the SSP Hoshiarpur who admittedly is neither necessary party nor the proper party. As regards the promotion of the juniors, learned courts below have not passed any order affecting adversely the juniors who were promoted as officiating ASI on 21st April, 1988. The learned counsel appearing on behalf of the respondent has also fairly conceded that he respondent was not claiming any seniority in the rank of Assistant Sub Inspector over his juniors who were promoted as officiating ASI on 21st April, 1988. In view of the this, I do not find any merit in this contention also raised by the learned AAG.

7. In view of the above discussion, the appeal filed by the State is dismissed with no order as to costs.