

2025:PHHC:118179



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

101

RSA-3780-2012

DATE OF DECISION: 03.05.2025

ATMA SINGH

...APPELLANT

VERSUS

STATE OF PUNJAB AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. R.C Chathrath, Advocate
for the Appellant

Mr. Jastej Singh, Addl A.G, Punjab

SANDEEP MOUDGIL, J (ORAL)

CM-10159-C-2012

Application is allowed, as prayed for.

RSA-3780-2012

1. The regular second appeal preferred before this Court is against the judgment and decree of PCS, Civil Judge(Junior Division), Patiala dated 08.09.2010 and that of appeal decided by District Judge, Patiala dated 27.04.2012 whereby the case of the appellant has been decided in contrary to the factual and legal position as there is no appreciation of fact, evidence and law.

2. The suit was decreed by Civil Judge (Junior Division), Patiala vide judgment dated 08.09.2010 in favour of the respondents/defendants since apart

from merits of the case, the suit was barred by limitation as the appellant/plaintiff had retired prematurely vide order dated 12.03.1998 and afterwards he had kept silent for good 7 years and had filed this civil suit for proficiency set up which was dismissed on the basis of delay.

3. The factual backdrop leading to the present case can be read as that the appellant/plaintiff joined the service as Sectional Officer in the office of PWD(BR,R) on 30.1,1970. Subsequently, he was promoted as Sub Divisional Engineer and his services were regularized on the post of Sub Divisional Engineer w.e.f 7.2.1983 and he was entitled for proficiency step up benefits on completion of 8/18 years of service as per the 3rd Pay Commission Report i.e. after completion of 8 years of service w.e.f 7.2.1991. Further as per guidelines issued by the 4th Pay Commission Report, he was entitled to proficiency step up benefits after completion of 4,9,14 years of service. According to him, he had completed service of years on 7.2.1992 and entitled to fixation of pay by way of proficiency set up benefit in the pay scale of Rs.12000-15500 and further entitled for benefit of completion of 14 years of service on 7.2.1997 in the pay scale of Rs.14300-18150 with next increment w.e.f 1.2.1998. Undisputedly, the appellant/plaintiff was charge sheeted for various departmental enquiries initiated against him. He was retired pre-maturely w.e.f. 12.3.1998. He filed suit for grant of retrial benefits as well as step up increment on completion of 8 years of service but that suit was decreed vide judgment and decree dated 26:3,2000 vide which interest was awarded on the retrial benefits. The appellant/plaintiff

had made prayer for grant of 8.18 increments in accordance with 3rd Pay Commission Report and also for grant of 4,9,14 Proficiency Step Up increments as per 4th Pay Commission but the same was declined to him.

4. Notice of the suit was given to the respondents/defendants to file the written statement who categorically submitted that the charge sheet dated 18.06.1993 was pending against him. He was awarded punishment of compulsory retirement vide letter dated 12.03.1998. He was even considered for grant of 8 years proficiency set up benefit but he was not found fit for the same. It was also submitted that the case of the appellant/plaintiff was considered for grant of 4,9,14 years scale as per the instructions dated 19.05.1998 and guidelines dated 17.04.2000 which required more than 50% of ACR's "good" but the ACR of the appellant/plaintiff for the period 1994-95 was adverse and the same was conveyed to him vide letter dated 13.11.1995 and besides that other chargesheets were also pending against him.

5. The trial Court framed following issues on 05.06.2006 on the basis of pleadings made by the parties to the present is:-

1. *Whether the plaintiff is entitled to declaration as prayed for? OPP*
2. *Whether the plaintiff is entitled to mandatory injunction as prayed for? OPD*
3. *Whether the suit is not maintainable in the present form? OPD*
4. *Whether the suit is barred by principle of res judicata? OPD*

5. Whether the suit is barred by the provisions of order 2 rule 2 CPC? OPD

6. Whether the present suit is barred by limitation? OPD

7. Whether the court has no jurisdiction to entertain and try the present suit? OPD

8. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD

9. Relief.

7. The trial Court while dismissing the suit observed that Order 2 Rule 2 CPC, provides that where the plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. It further held that the suit stands barred by limitation as appellant/plaintiff was prematurely retired vide order dated 12.03.1998 and afterwards he kept silent for 7 years and now after 7 years of his retirement, he has come to the court for proficiency step up, which is quite delayed and prima facie barred by limitation.

8. The said judgment and decree dated 08.09.2010 was challenged before the Court of District Judge, Patiala by appellant/plaintiff by way of filing Civil Appeal under Section 96 of Civil Procedure Code. The appeal was dismissed vide order dated 27.04.2012 upholding the judgment and decree passed by the trial Court and now the Regular Second Appeal has come up before this court.

9. It is contended assailing the judgment and decree passed by the lower courts below that they are contrary to the factual and legal position as there is no proper appreciation of facts, evidence and law.

10. Learned counsel for the appellant/plaintiff would assert that he made repeated representations to the Department requesting time and again to grant him the benefit of 8/18 years of service as per 3rd pay commission report and the benefit of proficiency set up on 4/9/14 years service as per the 4th pay commission report and as a result of non grant of the same, he had suffered recurring loss by getting less pension per month.

11. Learned counsel for the appellant/plaintiff also submits that once it is admitted position that there were no adverse remark or any ACR was communicated, in these circumstances the same could not be used against the appellant/plaintiff for denying the benefit of ACP after 9 years.

12. Learned counsel for the appellant/plaintiff contends that both the courts below failed to appreciate that the appellant/plaintiff has been granted retrospective confirmation of his promotion after completion of his probation successfully vide order dated 26.03.1996, thus the condition prerequisite of fulfilment of the criteria for promotion stood *ipso facto* satisfied. As far as passing of the Departmental professional test, the appellant/plaintiff passed the same on 18.10.1993, much before 01.01.1996, i.e. the coming into force of the ACP.

13. It is also submitted that the suit is well within the limitation since pay fixation is a continuous wrong as per settled law as the earlier suit was filed on 01.02.2005 and the claim was rejected on 14.07.2005 and the plaint was amended accordingly. Further, the finding of *res-judicata* is not legally sustainable, since the Scheme came into force on 17.04.2000 while the earlier suit was filed on 07.06.1999, the rejection of the claim was on 14.07.2005 therefore principle of *res judicata* would not apply since it gave fresh cause of action to the appellant/plaintiff

14. Heard, learned counsel for the appellant at length.

15. Having perused the record and after going through the evidence put forth before this Court, it is very much evident that the appellant/plaintiff was promoted on ad-hoc basis as Sub Divisional Engineer and subsequently he passed the departmental professional examination on 07.09.1993 wherein he was promoted as Sub Divisional Engineer. Further, the Govt of Punjab vide letter no.7/1/97-FPI/7370 dated 19.05.1998 had granted 4,9,14 years increments on regular service. However, vide letter dated 23.09.1998, the operation of the above scale was held in abeyance. Vide letter dated 17.04.2000, this scale was granted to the Govt employees under the recommendation of the 4th Punjab Pay Commission Implementation of Assured Career Progression Scheme w.e.f 01.01.1996 wherein it was made applicable to all employees who had opted it to get this pay fixed in the revised scale from the date after 01.01.1996 under rule 6 of the Punjab Civil Services(Revised Pay) Rules 1998. vide Ex.P7, the Govt of

Punjab had declined to grant 4,9,14 and 8 years proficiency set up increment observing that after the date of passing of departmental professional examination, he was not having 50% 'Good' Annual Confidential Reports.

16. Additionally, vide Letter dated 13.11.1995 Ex.D-8, the appellant/plaintiff was conveyed that the Annual Confidential Report for the year 1994-95 was adverse and the same was denied to have been received by the appellant/petitioner, although in his affidavit Ex. PW1/A, he has nowhere stated that the above mentioned letter was not conveyed to him. Apart from it, the appellant/plaintiff had been facing departmental enquiry wherein he was charge sheeted and departmental enquiry was initiated against him and he was dismissed by the punishing authority vide order dated 11.04.1991 to which he preferred Civil Writ Petition No.9661 of 1991 before this court which was allowed but again after departmental enquiry, he was compulsary retired from the service vide order dated 12.03.1998. In view of this matter, after enquiry, he was not entitled for promotion which is the criteria for giving 4,9,14 proficiency set up increment.

17. As far as 8 years proficiency set up increment is concerned, he had filed a suit no.140 dated 07.06.1999 which was ultimately decreed on 26.03.2002 and the relief was declined to the appellant/plaintiff, the relevant para of which is reproduced herein below:-

“9. Thus considering the evidence on the judicial file, I find as regards the proficeincy set up, it is proved on record by the

defendants that the plaintiff has not completed the prescribed period of satisfactory service for awarding him proficiency step up before he was prematurely retired.”

Once this judgment had attained finality, it would amount to *res judicata* on the subsequent suit wherein the appellant/plaintiff had again claimed 9 years proficiency step up increment on completion of 7 years of service upto 07.02.1991, when in the previous judgment it was already held that the appellant/plaintiff had failed to establish 8 years service for grant of proficiency step up therefore he is also not entitled to 9 years proficiency step up increment.

18. The Govt of Punjab vide notification dated 19.05.1998 had awarded ACP on completion of 4,9,14 years regular service. The appellant/plaintiff filed previous suit in which he claimed only 8 years proficiency step up increment and not 9 years proficiency step up. Further the Govt of Punjab awarded ACP benefit vide letter dated 17.04.2000 and the appellant/plaintiff was compulsorily retired from service w.e.f. 12.03.1998, therefore the suit was filed beyond period of limitation.

19. Taking into consideration the facts of the instant petition, this court is of the considered opinion that where the person is entitled to more than one relief in respect of same cause of action he may sue for all or any of such reliefs, but if he omits, except with the leave of the court, to sue for all such reliefs he shall not afterwards sue for any relief so omitted. Hence, where the appellant/petitioner had right to claim for 18 years, 4/9/14 years in the earlier suit

and he had relinquished the same with his own accord, therefore he cannot claim for relief qua 4,9,14 and 18 years of service which is hit by the provisions of Order 2 Rule 2 of CPC.

20. Accordingly, the present Regular Second Appeal stands dismissed and judgment and decree dated 08.09.2010 and 27.04.2012 is hereby upheld.

21. The decree-sheet be prepared accordingly.

(SANDEEP MOUDGIL)
JUDGE

03.05.2025

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Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*