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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Judgment : 08.11.2010

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R.S.A.No.191/2010 & C.M.18856/2010

KHEM SINGH

.....Appellant
Through: Mr.Rajeev Kumar,
Advocate.

Versus

ORIENTAL BANK OF COMMERCE & ANR. Respondents

Through: Nemo.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.(Oral)

C.M.18856/2010 (for exemption)

Exemption is allowed subject to just exceptions.

Application is disposed of.

R.S.A.No.191/2010

1. This second appeal is directed against the impugned judgment and decree dated 31.7.2010 which had endorsed the finding of the trial court dated 5.9.2006 whereby the suit of the plaintiff Khem Chand seeking an injunction against the defendant bank had been dismissed.

2. The present suit was a suit for declaration, mandatory and permanent injunction. It was filed by six plaintiffs. Khem Chand plaintiff no.1 is the only aggrieved appellant in this second appeal. The plaintiff/appellant had been registered with the Employment

Exchange for the purposes of getting employment. Defendant no.1 i.e. Oriental Bank of Commerce had sent a requisition to defendant no.2 i.e. Employment Exchange for recruitment to the posts of Peon-cum-Waterman. This was vide Ex.DW1/1 dated 1.3.1995. Defendant no.1 had desired recruitment of 28 Peon-cum-Waterman for various branches/offices of their bank. The plaintiffs had been called for interview on 12.5.1995. The contention of defendant no.2 was that since the plaintiff had been registered with the employment exchange after 1.3.1995 his case could not be considered by defendant no.1. Plaintiff was accordingly not considered for employment. This had resulted in the filing of the present suit.

3. The trial judge had framed seven issues which were again reframed on 8.5.2002. One witness was examined on behalf of the plaintiff and one witness was examined on behalf of the defendant. The names of 154 candidates including those of the plaintiffs had been sent by defendant no.2 to defendant no.1. Appellant was interviewed on 12.5.1995. On the scrutiny of the papers it was noted that the appellant had been registered with defendant no.2 after 1.3.1995 i.e. after the period of time when the vacancies were notified. Further defendant no.2 had sent the list of candidates for the post of waterman alone whereas the contention of defendant no.1 was that he had sought recruitment for the posts of Peon-cum-Waterman. In these circumstances, defendant no.1 vide communication dated 17.5.1995 Ex.DW1/3 returned the list of candidates to defendant no.2 with a request to send a fresh list. Suit of the plaintiff was dismissed. He was held not entitled to any relief.

4. This finding was endorsed by the first appellate court vide the impugned judgment dated 31.7.2010.

5. Learned counsel for the appellant has urged that the testimony of DW1 clearly shows that the document i.e. Ex.DW1/3 dated 17.5.1995 was not a proper mode for proving the aforementioned document and a suggestion had also been given by learned counsel for the plaintiff to the said witness. Nevertheless this document had been taken on record; this is an illegality and raises a substantial question of law. The second argument urged before this court is that the document Ex.DW1/1 which is dated 1.3.1995 had sought a requisition of 28 persons for the post of Peon-cum-Waterman. This was subsequently changed vide the second communication dated 17.5.1995 Ex.DW1/3 whereby the defendant no.1 had written to defendant no.2 varying the earlier recruitment process and had now asked for posts of Peon alone. This has also raised a substantial question of law. It is also not explained as to why the results of the interview held on 12.5.1995 had not been declared.

6. This is a second appeal. This court is not a third fact finding court. The contention of the appellant that document Ex.DW1/3 was not rightly exhibited in evidence and could not have been taken on record does not raise a substantial question of law. Ex.DW1/3 had been exhibited in the version of DW1. The objection to the mode of proof of this document was never raised before the trial court or even before the first Appellate court. An application to the said effect could have been filed; admittedly, nothing of this sort was done. A mere suggestion given to DW1 that Ex.DW1/3 is a fabricated document did not by itself establish the submission of

the learned counsel for the appellant that this document is a manipulated document and could not have been taken on record or read in evidence.

7. Defendants have categorically explained their stand. Admittedly, the appellant had been registered with the Employment Exchange only after 1.3.1995. Defendant no.1 had sent a requisition to defendant no.2 on 1.3.1995 vide Ex.DW1/1 seeking suitable candidates for the post of Peon-cum-Waterman. Persons registered after the said date i.e. after 1.3.1995 were rightly not considered by the Employment Exchange. Further the list of 154 candidates which had been sent by defendant no.2 to defendant no.1 were only for the post of waterman whereas in terms of the communication Ex.DW1/1 defendant no.1 had desired to recruit Peon-Cum-Watermen and not a watermen alone. There was no variation in the earlier communication of 1.3.1995. Vide the subsequent communication of 17.5.1995 defendant no.1 had wanted suitable candidates for the posts of Peon-cum-Watermen which was their request all-along. The impugned judgment has indepth answered all these submissions which have been addressed before this court.

8. The relevant extract of the impugned judgment read as follows:

“9. The real bone of contention is the alleged non declaration of result of interviews of plaintiffs by the defendant prior to asking a fresh list of candidates from Employment Exchange and conducting their interviews.

10. Much stress has been laid on the lying out of statement of DW1 where he had admitted that the defendant had not declared the result of interviews held on 12.5.95. A line out of the statement of witness cannot be singled out for interpretation. A wholesome reading of the deposition of DW1 along with the case of defendant would reveal that the defendant had never set up a case of having declared the result of interviews conducted on 12.05.95. They have consistently stated that the list forwarded by Employment Exchange was cancelled and returned. This version of respondent no.1 finds

corroboration in the stand of respondent no.2. The reservation of plaintiff about actual delivery of letter dated 17.05.1995, Ex.DW1/3 by defendant no.1 to defendant no.2 loses significance on being controverted.

11. As per Section 4 (4) of Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 and Rule 5 framed there under. An employer is obliged only to notify the vacancies to the Employment Exchange. They are not bound to appoint only those candidates who have been sponsored by Employment Exchange. Ref.Union of India Vs. Har Gopal (1987) 3 SCC 308

12. Rule 5.(1) provides that vacancies are required to be notified to the local Employment Exchange at least 15 days prior to date on which applicants' would be tested or interviewed. Rule 5 (3) further stipulates that an employer shall furnish to the concerned Employment Exchange. The result of selection within 15 days from the date of selection.

13. It can legitimately be discerned from above statutory provisions that although an employer may have informed the candidates about their sponsorship from X-Employment Exchange having been returned yet it did not cast a legal obligation on it to do so. The candidates sponsored by employment Exchange were still connected with it and were they really interested in the result, could have contacted them for updates.

14. The posture taken by defendant no.1 is not incongruous to the prevailing circumstances. The interviews of candidates including plaintiffs sponsored by Employment Exchange were held by defendant no.1 on 12.5.1995. On the very next day there were huge Media reports in the Times of India and Hindustan Times regarding Employment Exchanges sponsoring bogus candidates against vacancies notified by Employers. A racket of malpractices including out of turn and managed sponsorship was un-urged by Crime Branch of Delhi Police. It is not unbelievable that the recruitment board of defendant no.1 then minutely scrutinized the details of candidates sponsored by Employment Exchange only to find that majority of them had registered with Employment Exchange only after notification of vacancies by them on 01.03.1995. There was natural and honest doubt about the entitlement of plaintiffs to the sponsorship as such the entire list sent by Employment Exchange was scrapped. It was returned with letter Ex.DW1/3 specifying that the bank does not wish to recruit any candidate from the list. Interestingly the subsequently sponsored candidates whose interviews were conducted on 20.12.1995 and 27.12.1995 were all registered with Employment Exchange prior to 01.03.1995. The plaintiff naturally could not have been given precedence over them without valid reason.

15. By the time the suit was filed, the selection process was over, considering candidature of plaintiff had the potential of unsettling the appointment of selected candidates. Plaintiff despite a specific objection taken in the written statement did not choose to implead them. The action of plaintiff without affording a right of hearing to the selected candidates could not have been continued. Ld.Trial Court has fully appreciated the oral documentary evidence relied upon by the parties and had come to a just conclusion on the point.

16. In view of the above the appeal is found to be absolutely meritless."

9. Appeal has no merit; it is dismissed.

INDERMEET KAUR, J.

NOVEMBER 08, 2010

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