

In the High Court of Punjab and Haryana at Chandigarh

RSA No.1765 of 1991

Date of decision: 18.9.2015

Rajinder Kumar

.....Appellant

Versus

Punjab State Electricity Board etc.

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Manish Dadwal, Advocate,
for the appellant.

Ms.Jarnail Kaur Dhaliwal, Advocate,
for respondents No.1 to 3.

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

RAJ MOHAN SINGH, J.

1. Plaintiff is in second appeal against judgment and decree dated 24.5.1991 passed by the lower Appellate Court , whereby judgment and decree dated 8.9.1988 passed by the Sub Judge, Ist Class, Hoshiarpur has been set aside.

2. Plaintiff filed a suit for declaration alleging therein that he joined services of defendant No.1 as lineman on 8.6.1978. Plaintiff was having three years' diploma in Electrical Engineering and had been working to the entire satisfaction of his superiors. Plaintiff had already earned his annual

increments from due dates and his name figured at Sr.No. 4411 in the seniority list. According to rules, diploma holders were to be promoted as Junior Engineer Grade-II on the basis of seniority-cum-merit, but the case of the plaintiff for promotion to the post of Junior Engineer Grade-II has been ignored, rather juniors to the plaintiff were promoted by defendant No.2 in the year 1985 onwards. The action of the department is claimed to be illegal and malafide. Defendant No.2 informed the plaintiff that he has been ignored on account of adverse remarks for the year 1981-82, 1.4.1982 to 12.10.1982 and 15.5.1984 to 31.3.1985.

3. It is further pleaded that the plaintiff had already filed representations against adverse remarks on 10.11.1982, 15.7.1983 and 15.7.1985 but no action was taken. Plaintiff again filed representation on 25.2.1986 that his pending representations be decided and he be given promotion. Plaintiff further alleged that Superintending Engineer had also written that there was no record of alleged negligence on the part of the plaintiff during the tenure of Sub Divisional Officer, V.K.Mehta. The Superintending Engineer had also passed remarks for the period from 15.5.1984 to 31.5.1985 showing them to be advisory in nature and the Superintending Engineer had issued a letter to the effect that the plaintiff be considered for promotion.

4. Defendants contested the suit on all customary pleas. The stand of the defendants was that the representation of the plaintiff against adverse remarks was duly considered and he was ignored for promotion due to unsatisfactory report in the year 1981-82, 1.4.1982 to 12.10.1982 and 15.5.1984 to 31.3.1985. Thereafter, amended written statement was also filed highlighting that in view of judgment of the Hon'ble Supreme Court, there should be joint seniority list of diploma holders and non diploma holders for promotion and therefore, even if ACRs of the plaintiff are to be ignored, plaintiff would get no chance of promotion.

5. Defendants took an objection that the representations filed by the plaintiff were disposed of on 16.6.1986. It has been found that the defendants had only alleged that representation regarding ACR for the period from 15.5.1984 to 31.5.1985 has been considered and rejected but there is no evidence on record to show that the other representations had also been considered and rejected.

6. After necessary pleadings and framing of issues, trial Court on the basis of material on record held that the plaintiff was senior to defendants No.4 to 50 and plaintiff was held entitled to promotion on the basis of his right for consideration. Trial Court decreed the suit by holding that representations qua adverse remarks for the period from 1.4.1981 to 31.3.1982, and

1.4.1982 to 12.10.1982 were not decided by the department so far and the report for the period from 15.5.1985 to 31.3.1985 was only advisory in nature and as such withholding of promotion of the plaintiff was not justified. Suit was decreed for declaration and specific direction to promote the plaintiff from 31.3.1985 was issued.

7. Lower Appellate Court set aside the judgment and decree of the trial Court on the ground that the case of the petitioner for promotion was considered when names of other linemen junior to him were considered and was deferred due to his adverse service record. Lower Appellate Court, while relying upon the judgment of the Hon'ble Supreme Court in case of **Punjab State Electricity Board, Patiala and others vs. Ravinder Kumar Sharma and others, AIR 1987 SC 367,** observed that the board was not justified in fixing separate quota for diploma holders and non diploma holders linemen and since the Hon'ble Supreme Court has struck down the quota rule, therefore, plaintiff is also not entitled to promotion.

8. I have heard the arguments of both the sides and have also perused the record. According to this Court, the questions which arise for consideration are as under:-

1. 'whether the remarks in ACR for the period from 15.5.1984 to 31.3.1985 can be treated to be adverse in nature particularly when those are advisory in

nature ?'

2. 'Whether such remarks can dis-entitle the plaintiff from seeking promotion in the absence of no decision taken by the department on representations qua other adverse reports?'

3. 'Whether the merger on the basis of striking down quota rule of promotion by the Hon'ble Apex Court, the plaintiff is still entitled to promotion on the basis of criteria of seniority-cum-merit w.e.f the date on which his juniors/ non diploma holders were promoted.?'

9. Plaintiff has already retired in the year 2013 on the post of Junior Engineer. Till the date of retirement there was no adverse report against the plaintiff nor any decision was rendered by the department on the representation in respect of adverse reports for the period of 1981-82 and 1.4.1982 to 12.10.1982. The question arises for interpretation is whether the report for the period from 15.5.1984 to 31.3.1985, which was advisory in nature, can be relied to dis-entitle the plaintiff for promotion. This is an admitted position that after striking down the quota rule of promotion of diploma holders by the Hon'ble Apex Court, the juniors who were promoted before the plaintiff have never been reverted back to the original position. The merger of diploma and non diploma holders is to be made. The

criteria which is to be adopted is the seniority-cum-merit and in any case seniority of non diploma holders cannot be treated to be higher than the plaintiff even on such merger. In case of plaintiff, the promotion could have been considered as per seniority-cum-merit as the judgment of the Apex Court does not rule out any such promotion based on seniority-cum-merit at due place.

10. Record in terms of Ex. P-13, reveals that copy of memo No.1331 dated 30.5.1986 was issued from SDO, City Dasuya to XEN/ DS. Division, Dasuya on the subject of request of the plaintiff for promotion as Junior Engineer, Grade-II. It has been observed in the aforesaid evidence that “in this connection, it is intimated that Er. V.K.Mehta, AEE, the then SDO City Dasuya had added the adverse remarks on the basis of personal assessment as per record of this office no any letter was issued to the official during incumbency of Er.V.K.Mehta City S/Divn. Dasuya. However, it is added that the work and conduct was found to be quite satisfactory.” The evidence was further supplemented by the interpretation attached with evidence Ex.P-15, wherein it was observed by the competent authority vide letter dated 19.6.1986 that the remarks for the period from 15.5.1984 to 31.3.1985 were only advisory in nature. In view of aforesaid, case for promotion of the plaintiff could not have been withheld for no justifiable grounds.

11. The legal proposition as emerged on record is whether the alleged report for the period from 15.5.1984 to 31.3.1985 can be termed to be adverse by any stretch of imagination. According to material on record, the defendant department itself has explained the entry to be advisory in nature. The entry being advisory in nature cannot be treated to be adverse for promotion. There is no adverse remarks or decision of representation thereof till date. The Courts have proceeded only on the basis of single entry 'advisory in nature'. The trial Court has considered the entry to be not sufficient to ignore the case of the plaintiff for promotion. Lower Appellate Court merely on the ground that the Hon'ble Supreme Court has struck down the quota rule of promotion of diploma holders, has drawn an assumption that the plaintiff will not make the grade in terms of seniority on merger with non diploma holders. In any case, the approach of the lower Appellate Court is not justified. Even on merger of diploma holders with non diploma holders, the plaintiff has right for consideration on his due number in joint seniority list. The case of the plaintiff is specific in nature that he is entitled to promotion w.e.f. the date on which his juniors were promoted.

12. The questions of law as formulated by this Court in preceding para have to be answered in favour of the plaintiff.

Firstly, the advisory nature of comments cannot be treated to be

adverse to debar the plaintiff from claiming promotion. Secondly, the striking of quota rule of promotion of diploma holders does not mean that the diploma holder will not claim seniority position on merger of cadres with non diploma holders for all times to come. Even the juniors, who were earlier promoted, have not been reverted back. It shows that the rule which was struck off by the Hon'ble Apex Court has not been given effect qua the employees, who were promoted prior in point of time. The evidence on record in view of Ex.P-13 and Ex.P-15 make it abundantly clear that there is no adverse thing against the plaintiff and his name for promotion should have been considered by the department.

13. In the light of aforesaid facts, this appeal is allowed. Judgment dated 24.5.1991 passed by the lower Appellate Court is hereby set aside and that of the trial Court dated 8.9.1988 is restored, leaving the parties to bear their own costs. Since the plaintiff has already retired, defendants are directed to work out the service benefits or retiral benefits based on deemed promotion w.e.f. the due date and consequently, benefits be paid to the plaintiff on such computation within a period of four months from the date of receipt of certified copy of the judgment.

(RAJ MOHAN SINGH)
JUDGE

September 18, 2015