

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 2944 of 2011 (O/M)
Date of decision : 19.8.2015

The State of Punjab and another Appellants

Versus

Kashmir Singh Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. T.N. Sarup, Additional A.G. Punjab,
for the appellants.

Mr. Surinder Garg, Advocate, for respondent.

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

-. -

-. -

KULDIP SINGH, J. (ORAL)

The State of Punjab has impugned the judgment and decree dated 10.3.2011, passed by the learned Additional District Judge, Ludhiana, reversing the judgment and decree dated 23.7.2009, passed by the learned Additional Civil Judge (Senior Division), Ludhiana, vide which the suit of the plaintiff (respondent herein) for declaration to the effect that he is entitled to be considered for promotion to the post of Draftsman with effect from 12.10.1983 when his juniors were promoted as Draftsman and that

RSA No. 2944 of 2011 (O/M)

-2-

he is entitled to all consequential benefits of the post of Draftsman such as pay, seniority etc. and its arrears alongwith interest at the rate of 18% per annum, was dismissed.

The brief facts of the case are that plaintiff/respondent Kashmir Singh joined the service in the Department of Soil and Water Conservation and Waste Land Development, Punjab, as a Tracer on 30.6.1972. His services were regularized on 4.1.1977. There was a joint seniority list of the Tracers and Junior Draftsman working in the said department. The final seniority list was circulated on 1.10.1988. According to the plaintiff/respondent, he was at Serial No. 46 of the seniority list, whereas Jarnail Singh was at Serial No. 64 of the seniority list, who joined on 10.1.1977. Sadhu Singh, who joined the department on 7.1.1977, was placed at Serial No. 67 and Goverdhan Lal was placed at Serial No. 77 of the seniority list, who joined on 26.4.1977. The said persons, namely, Jarnail Singh, Sadhu Singh and Goverdhan Lal were promoted to the post of Draftsman on 12.10.1983, by ignoring the name of the plaintiff. The plaintiff was promoted on adhoc basis as Draftsman with effect from 15.5.1989, whereas he should have been promoted with effect from 12.10.1983, from which date his juniors, namely, Jarnail Singh, Sadhu Singh and Goverdhan Lal were promoted. One Jaswinder Singh, Tracer, who was at No. 76 in the seniority list and another person, namely, Malkiat Singh, Tracer, having seniority No. 61 were

RSA No. 2944 of 2011 (O/M)

-3-

promoted as Draftsman with effect from 12.10.1983, as per the orders of the Court. The case of the plaintiff/respondent was not considered by the department even when these persons were promoted. The plaintiff/respondent moved various representations to the authorities, but all went in vain.

The stand of the State in the written statement is that promotion of Jarnail Singh, Sadhu Singh and Goverdhan Lal was not made on the basis of seniority, but against the post of Draftsman against direct quota. The applications for the said post having requisite qualification were called through employment exchange and departmental circular. Those candidates, who appeared in the interview, were considered on merits and suitable candidates were selected on merit. The plaintiff had not applied for the direct post. Regarding Jaswinder Singh, it was stated that he was conditionally promoted subject to the decision of RSA No. 1927 of 1990.

From the pleadings, following issues were made :-

1. Whether the plaintiff is entitled to be considered for promotion to the post of draftsman w.e.f. 12.10.1983 with all the consequential relief of the post ? OPP
2. If issue No. 1 is decided in favour of the plaintiff, to what consequential benefit plaintiff is entitled and rate of interest which he is entitled on the consequential benefits ? OPP
3. Whether the suit of the plaintiff is not maintainable in the

RSA No. 2944 of 2011 (O/M)

-4-

present form ? OPD

4. Whether the suit of the plaintiff is not maintainable on the ground of joinder of necessary parties ? OPD

5. Relief.

The lower Court came to the conclusion that Jarnail Singh, Sadhu Singh and Goverdhan Lal are not the parties to the suit. It was also held that they were promoted against the post of direct quota of Draftsman and that applications from candidates having requisite qualification for the said post were invited from the employment exchange and through departmental circular No. 3970-87 dated 23.2.1983. The plaintiff had not applied for direct post of Draftsman. Therefore, he was not considered. Consequently, the suit of the plaintiff was dismissed with costs.

In the appeal, the learned Additional District Judge, Ludhiana, held that DW1 had admitted in cross examination that Jarnail Singh, Sadhu Singh and Goverdhan Lal were junior to the plaintiff and were departmental candidates. The lower appellate Court also found that there are documents Ex. P11 and Ex.P12 which depict that the plaintiff had applied for the post of Draftsman through proper channel. It was also held that the limitation does not apply in the present case as the fundamental right of a citizen is infringed. The seniority list was also considered, stating that the plaintiff was junior to said Jarnail Singh etc. It also found that the

RSA No. 2944 of 2011 (O/M)

-5-

plaintiff had made representations Ex.P9 on 2.9.2002 and Ex.P10 on 24.6.2002. Accordingly, the suit was decreed after reversing the judgment of the lower Court.

I have heard the learned counsel for the parties and have also carefully gone through the case.

I am of the view that the lower appellate Court erred in reversing the findings of the lower Court. In this case, the plaintiff claimed seniority over Jarnail Singh, Sadhu Singh and Goverdhan Lal. However, they were not made party in the present case. Therefore, no orders could be passed against them. Secondly, the plaintiff claimed that he was not considered for the promotion when these persons, namely, Jarnail Singh, Sadhu Singh and Goverdhan Lal were promoted with effect from 12.10.1983. However, he filed two representations in the year 2002 and remained silent for all the times. He filed the suit only on 25.3.2004 i.e. after 21 years of the promotion of his alleged juniors. Of course, the fundamental right is there, but the bar of limitation is also there and every citizen is required to approach the Court within the period prescribed under the Limitation Act. Therefore, the suit is patently time barred also. Thirdly, the first appellate Court erred in ignoring the fact that fact proved goes to show that the plaintiff had applied for the post of Draftsman through proper channel, which would mean that it was not a case promotion, but direct appointment, for which the

RSA No. 2944 of 2011 (O/M)

-6-

applications for the direct post of the Draftsman were invited. There is nothing on file to show that the plaintiff appeared in the said interview. Thereafter, after such a gap of 21 years, he cannot claim that he was ignored even for the said appointment through direct recruitment. Whoever applied for the said post appeared in the interview and were considered for the appointment to the post of Draftsman and accordingly, the appointments were made. It being so, the said appointment cannot be called departmental promotion. Therefore, the plaintiff was not entitled to be considered for the said post on account of seniority for the purpose of promotion.

So far, the case of Jaswinder Singh is concerned, he was promoted subject to the decision of RSA No. 1927 of 1990. Even when the plaintiff was promoted on adhoc basis with effect from 15.5.1989, he did not make any representation immediately that he should also be promoted with effect from 12.10.1983 on regular basis. It being so, I am of the view that the first appellate Court erred in interfering with the well reasoned order of the lower Court. Consequently, the impugned judgment and decree dated 10.3.2011, passed by the first appellate Court, is set aside and the suit of the plaintiff stands dismissed. The present appeal is accordingly allowed.

(KULDIP SINGH)
JUDGE

19.8.2015
sjks