

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 4267 of 2011

Date of decision : May 4, 2015

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Vijay Kumar

.....Appellant

Versus

State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. K.L Dhingra, Advocate for the appellant.

Mr. Siddharth Sanwariya, DAG, Haryana
for respondents no. 1 to 3.

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1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

The plaintiff-appellant has come up in regular second appeal against the judgment dated 9.12.2010 passed by the Additional District Judge, Chandigarh whereby appeal against the judgment and decree dated 13.3.2008 passed by Civil Judge (Junior Division), Chandigarh was allowed and the suit of the plaintiff-appellant was dismissed. Vide the trial Court judgment suit of the plaintiff-appellant was decreed.

The plaintiff-appellant joined as Clerk on ad hoc basis in the office of Deputy Commissioner, Ambala on 30.11.1984 and his

services were regularized w.e.f 31.12.1990 by the Deputy Commissioner, Ambala vide order dated 18.7.1992 Ex. D-1. Thereafter in view of the notification dated 28.4.1997, the case of the plaintiff-appellant for regularization of his services was again examined and he was found entitled to be regularized w.e.f. 30.9.1988. Accordingly, his services were regularized w.e.f 30.9.1988 by Deputy Commissioner, Ambala vide order dated 29.10.1999 Ex. D-3/Ex. P-2/2. In the year 1995, a new District Panchkula was carved out and the services of the respondent were allocated to District Panchkula. On 15.3.1999, Suresh Kumar and Manoj Kumar, Clerks were promoted to the post of Assistant vide endorsement dated 15.3.1999.

The plaintiff-appellant is claiming promotion to the post of Assistant on the ground that Suresh Kumar and Manoj Kumar were junior to him. Plaintiff-appellant did not choose to implead Suresh Kumar and Manoj Kumar as parties in the suit and no judgment/decreed could be passed in their absence detrimental to their interest. Moreover for the purpose of seeking promotion, 70% of the service record is required to be good. But the plaintiff-appellant did not possess 70% good service record on the post of clerk for the purpose of his promotion to the post of Assistant. The criminal case against the plaintiff-appellant was not pending on 15.3.1999 when his juniors were promoted but the appellate Court while considering the case of the plaintiff-appellant for promotion did not lose sight of the fact that a case vide FIR No. 111 dated

11.5.2002 has been registered against him under Sections 420, 467, 468, 471, 409 and 120-B IPC at Police Station Chandimandir, Panchkula for tempering forging and fabricating the official record. The said case had been registered against the plaintiff-appellant on the complaint of the Deputy Commissioner, Panchkula. His service record reveals that he absented himself on several occasions without getting the leave sanctioned and he was awarded a punishment of censure vide order dated 10.2.1994 passed by the Deputy Commissioner, Ambala. His three increments were also stopped with commutative effect vide order dated 22.3.1995 passed by the Deputy Commissioner, Ambala. The case of plaintiff-appellant for promotion in the year 1998 could not be considered as there was no material to show that there was any existing vacant post of the Assistant in the year 1998. In the absence of post, no order of promotion could be passed. The plaintiff-appellant was granted higher standard pay scale w.e.f 1.3.1995 and his services were regularized w.e.f 30.9.1988. Hence he completed 10 years of service on 30.9.1998 and would have been entitled to first higher standard pay scale only on 1.10.1998. The Government of Haryana vide notification dated 7.1.1998 repealed the circular dated 8.2.1994 Ex. P-2/8 for providing higher standard pay scale. Vide said notification dated 7.1.1998, Haryana Civil Services (Assured Career Progression) Rules, 1998 were framed and made effective from 1.1.1996. Prior to 1.1.1996, the plaintiff-appellant had not completed 10 years of service enabling him to avail the benefit of higher standard pay scale. On

the introduction of the Haryana Civil Services (Assured Career Progression) Rules 1998, the case of the plaintiff-appellant was to be considered for grant of first ACP. This relief had not been sought by the plaintiff-appellant. Cause of action to claim promotion to the post of Assistant and to challenge the promotion of his alleged juniors arose to the plaintiff-appellant either on 15.3.1999 or on 29.10.1999 but the plaintiff-appellant filed the present suit on 11.1.2005 beyond a period of limitation of three years. Serving of legal notice under Section 80 CPC one on 3.9.2001 and another on 16.8.2004 would not extend the limitation of filing the suit. This aspect has been considered by this Court in the case of **State of Haryana vs. Shiv Narain, Forester Social Forestry Range, Sonapat 2000 (1) RSJ 385**, wherein it was observed that *the relief of declaration has to be sought for within 3 years and the suit filed after four years of the date when the juniors were promoted is barred by limitation*”.

The lower appellate Court has rightly come to the conclusion that the plaintiff-appellant was not entitled for promotion w.e.f the date when his juniors Manoj Kumar and Suresh Kumar were promoted as on that date, his services had not been regularised. Moreover, the plaintiff-appellant had abandoned his claim for special increment on the completion of 8/18 years of service and claims for crossing of efficiency bars. Hence only relief sought by him was promotion to the post of Assistant which for the reasons recorded above has been rightly declined by the appellate Court and his suit has been dismissed.

In the light of above discussion, no substantial question of law arises for consideration in this regular second appeal. Hence, the same is dismissed.

May 4, 2015
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(**RITU BAHRI**)
JUDGE