

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

LPA No.1408 of 2015(O&M)

Date of decision:24.9.2015

Vijay Kumar and another

....Appellants

VERSUS

Haryan State and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Mr. Deepak Sonak, Advocate for the appellants.

HEMANT GUPTA, J.(Oral)

The present Letters Patent Appeal under Clause X of the Letters Patent is directed against an order passed by learned Single Bench of this Court on 18.02.2015 whereby learned counsel appearing for the appellant before the learned Single Bench conceded that in view of the judgment and decree passed by this Court in RSA No.1034 of 1993 titled Dharam Pal v. State of Haryana decided on 01.04.2014 nothing survives in the writ petition. Subsequent, review application filed by the appellant-Vijay Kumar was dismissed on 28.08.2015.

The appellants have challenged their reversion vide order dated 21.03.1995 (Annexure P-8) whereby the promotion of the appellants to the post of Helper vide office order dated 26.12.1985 was found to be contrary to the judgment of this Court in RSA No.856 of 1992 titled State

of Haryana v. Jai Kishan, decided on 07.02.1994. Earlier, the appellant-Vijay Kumar was served with a notice that as to why he should not be reverted. After considering the reply filed, the appellant-Vijay Kumar was ordered to be reverted on 21.03.1995 in compliance of the orders of this Court in the aforesaid appeal.

In the said appeal, one Jai Kishan at Seniority No.65 and Dharamvir at Seniority No.99 were the plaintiffs. The Court found them eligible for promotion from the date their junior was promoted i.e. 26.12.1985. Another suit was filed by Dharam Pal at Seniority No.70 claiming the same relief as was claimed by Jai Kishan and Dharamvir whereas the appellant-Vijay Kumar in the present appeal was at seniority No.124. The Regular Second Appeal arising out of the said suit stands decided on 01.04.2014, the basis of the order impugned in the present appeal. After considering the fact of promotion of the juniors while ignoring the seniors, learned Judge hearing the Regular Second Appeal passed the following order:-

“Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned judgment and decree dated 10.12.1992 passed by the learned Additional District Judge, Sonapat, has been found to be suffering from patent illegality which cannot be sustained and the same is hereby set aside.

Consequently, suit of the plaintiff is decreed holding him eligible for promotion to the post of Electrician w.e.f. 26.12.1985, the date from his juniors were promoted. He is also held entitled for re-fixation of his pay and for arrears of salary alongwith interest @ 12% per annum, in view of Hon’ble Full Bench Judgment of this Court in **A.S. Randhawa Supdg. Engineer (Retd.) Vs. State of Punjab, 1997 (3) SCT 468**. Appellant shall also be entitled for other consequential service benefits.”

It is the said order which was found to be binding between the parties.

Learned counsel for the appellants has vehemently argued that the appellants were promoted on merits and therefore, the direction to promote the plaintiffs either at Seniority No.65, 99 or 70 will not affect the promotion granted to the appellants on 26.12.1985.

We do not find any merit in the argument raised. In Regular Second Appeal, it has been found that the plaintiffs were eligible on 26.12.1985 and also completed 6 years of service when juniors were promoted. Consequently, the appeal was allowed and the person at Seniority No.70 was ordered to be promoted from the date when his junior was promoted.

The appellants were ordered to be reverted to comply with the order passed in RSA No.856 of 1992. In the said appeal, finding was recorded that case of T/Mates who were eligible for promotion as Electrician on 26.12.1985 when the post of Electrician become available have to be considered and senior-most T/Mate found eligible and suitable for promotion has to be promoted against the said vacancy.

Since, senior T/Mates were not granted promotion whereas the appellants were promoted, though down below of the seniority list, it cannot be said that the reversion of the appellants is unjustified. The appellants are required to be reverted to make room for the seniors. The order passed in fact is legal, fair and justified, apart from the fact that it is not a consent order.

In view of the said fact, we do not find any reason to interfere
in the present Letters Patent Appeal.

Dismissed.

(HEMANT GUPTA)
JUDGE

SEPTEMBER 24, 2015
'D. Gulati'

(RAJ RAHUL GARG)
JUDGE