

In the High Court of Punjab and Haryana at Chandigarh

R.S.A.No. 4996 of 2011 (O&M)

Date of decision: 8.10.2015

The Jind Co-operative Sugar Mills Ltd.Jind

.....Appellant

Versus

Ajmer Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Varun Gupta, Advocate,
for the appellant.

Mr.Ajay Kumar Kansal, Advocate
for respondents No.1 and 2.

Mr.Ram Niwas Sharma, Advocate,
for respondents No.3 and 9.

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. Defendant No.1-Jind Co-operative Sugar Mills Ltd. Jind (here-in-after referred to as 'Sugar Mill') through its Managing Director is in second appeal against the judgment and decree dated 21.9.2011 passed by Additional District Judge, Jind, whereby, judgment and decree dated 6.6.2008 passed by Civil Judge (Sr.Divn.) Jind has been upheld.

2. Brief facts of the case are that plaintiffs-respondents No.1 and 2 filed a suit for declaration to the effect that they were

entitled to be promoted on the post of D.G.Set Operator in the Sugar Mill w.e.f. the date when their juniors i.e. defendants No.2 to 9 were promoted. Plaintiffs claimed all consequential benefits of pay and allowances with interest @ 18% per annum.

3. Plaintiffs were appointed in the Sugar Mill in February 1985 on the post of Motor Pump Attendants as seasonal permanent. The grievance of the plaintiffs was that defendants No.2 to 9, who were juniors to them, were promoted on the post of regular D.G.Set Operators seasonal permanent with 50% retaining allowance. Some of the defendants were promoted as Turbine Operators with 50% retaining allowance and the last two defendants were promoted as regular Oil Man. The defendants were promoted without considering the claim of the plaintiffs, who were more qualified and senior to them and were appointed as semi skilled workers on the post of Motor Pump Attendant.

4. Defendants contested the suit on all customary pleas. The cumulative stand of the defendants was that defendants No.2 and 3 were working against sanctioned posts of D.G.Set Operator/ Tubewell Attendant, whereas, defendants No. 4 to 7 were working against the sanctioned post of Turbine Attendants and defendant No.8 was working against the sanctioned post of Tubewell Operator/ Attendant and defendant No.9 was working against sanctioned post of Oilman/ Attendant.

5. The work assignments performed by the plaintiffs as

well as defendants were different in segments and sections.

Defendant No.2 Hoshiar Singh joined as regular un-skilled worker on 29.6.1987 on adhoc basis and his services were regularised on 5.7.1989 and was given designation of D.G.Set Operator/ Tubewell Attendant on 18.2.1999. Defendant No.3 Mehar Singh joined as un-skilled worker on 24.7.1989 and was given designation of D.G.Set Operator/ Tubewell Attendant seasonal permanent on 18.2.1999. Defendant No.4 Mahabir joined as daily wage worker and was made seasonal permanent on 1.1.1997 and was given designation of Turbine Attendant, seasonal permanent on 18.2.1999. Defendant No.5 Balbir Singh, defendant No. 6 Gian Singh and defendant No.7 Hukam Singh joined as daily wage workers and were made seasonal permanent on 5.7.1989 and defendant No.7 was given designation of seasonal permanent Turbine Attendant on 18.2.1999. Defendant No.8 Suresh Kumar joined as regular un-skilled worker on Adhoc basis on 27.6.1987 and was made regular w.e.f. 5.7.1989 and was designated as Tubewell Operator/ Attendant on 18.6.1999. Similarly, defendant No.9 Darbara Singh joined as un-skilled worker on 29.6.1987 on adhoc basis and was made regular on 5.7.1989 and was given designation of Oilman/ Attendant on 18.2.1999. In most of the cases of defendants, designation has been given after their initial appointment on different posts on 18.2.1999.

6. Defendants have also submitted that plaintiffs were working as seasonal permanent as Motor Pump Attendants on 29.10.1985 and the defendants were being paid 30% as retaining allowance during off season as there were posts of D.G.Set Operator/ Tubewell Attendant on seasonal permanent category. Cumulative stand of the defendants on record was that there were 3 regular posts of D.G.Set Operator/ Tubewell Attendant on which Dilbag, Mahender and Hoshier Singh were working and 4th post was of seasonal permanent on which Mehar Singh was working. There were 11 posts of seasonal permanent Turbine Attendant and one post of Turbine Mechanic and all were occupied. Defendant No.6 was working as Turbine Attendant from the last 12 years and the plaintiffs' posts were separate and there was no question of joint seniority of the defendants with the plaintiffs.

7. On completion of pleadings following issues were framed by the trial Court:-

1. Whether the defendant No.1 illegally and wrongfully promoted the defendants No.2 to 9 being junior to the plaintiffs and plaintiffs are entitled to all consequential benefits of pay and allowances with interest @ 18% per annum from the date when juniors to the plaintiffs were promoted ? OPP

2. Whether the suit of plaintiffs is bad for notice under

Section 124 of Haryana Co-operative Societies Act,
1983 ? OPD

3. Whether the suit of the plaintiffs is bad for non-joinder of necessary parties?OPD
4. Whether the civil court has no jurisdiction to try and entertain the suit ? OPD
5. Whether the suit of the plaintiffs is not maintainable in the present form and plaintiffs have no locus standi to file the present suit ? OPD
6. Relief.”

Parties led their respective evidence in support of their case.

8. Trial Court, after discussing material loopholes in the case of defendant No.1, decided issue No.1 in favour of the plaintiffs by holding that defendant No.1 illegally and without any basis gave favour to defendants No.2 to 9 out of the way by ignoring the claims of the plaintiffs despite they being senior to the defendants. Issue No.2 was not pressed by the defendants during the course of arguments. Accordingly, this issue was decided against the defendants. Issues No.3, 4 and 5 were also decided against the defendants on the basis of findings recorded under issue No.1. Suit was decreed with costs by the trial Court vide judgment and decree dated 6.6.2008 and consequently, the plaintiffs were held entitled to all the

consequential benefits of pay and allowances with interest @ 12% per annum from the date when defendants were promoted.

9. Feeling aggrieved against the aforesaid judgment and decree, defendant No.1 filed appeal, which was dismissed by the lower Appellate Court vide judgment and decree dated 21.9.2011 after noticing malafide attitude of defendant No.1. Hence, the present appeal by defendant No.1.

10. I have considered the arguments of both the sides and have also perused the record.

11. Learned counsel for the appellant has argued that the line of promotion from Motor Pump Attendant is towards Helper, Fitter, Head Fitter or Foreman, which is semi skilled category having defined qualifications, whereas, defendants were appointed as un-skilled labour and this is non professional avenue. Both the categories are different categories and concept of cadre is not involved. Learned counsel further submitted that in the year 2002, revised staff strength was implemented. Posts of D.G.Set Operators were reduced to one, posts of Tubewell Attendants were reduced to seven, posts of Turbine Attendants were reduced to one and posts of Motor Pump Attendants were reduced to fourteen.

12. In the year 2012, there was a revised staff strength of the posts of D.G.Set Operator that stand abolished. There was no mentioning of cadre and only categories were mentioned.

The Courts below overlooked this pertinent aspect of the matter. However, learned counsel for the appellant has admitted that after revision of aforesaid staff strength none of the defendants, who were occupying the posts in question, have been demoted nor there is such intention of defendant No.1 as on date. According to learned counsel, different lists have been prepared for different categories and these categories are not overlapping and have no inter se promotional avenues between them.

13. A perusal of the record gives the following attending circumstances:-

(a) DW-1 Balwant Singh, Establishment Clerk, while appearing in the witness box, has submitted various documents in respect of posting and re-designation of defendants No.2 to 9 as well as of the plaintiffs. He has stated in his affidavit Ex.DW1/A that on 16.2.1999, Mehak Singh, Chief Engineer had given designation of D.G.Set Operator to defendants Hoshier Singh and Mehar Singh. Defendants No.4 to 7 were given the designation of Turbine Attendant. Post of D.G.Set Operator is also called as Engine Driver.

(b) A policy of pick and choose has been adopted by defendant No.1 in giving preference to the cause of

defendants No.2 to 9. Admittedly, plaintiffs joined the services of Sugar Mill in the year 1985 on the post of Motor Pump Attendant as seasonal permanent vide appointment letters Ex.D-1 and Ex.D-2 in the pay scale of ₹ 348-2-366/3381. Plaintiffs were semi skilled workers. Defendants No.2 to 9 joined services of defendant No.1 as un-skilled workers. Hoshiar Singh was appointed as an un-skilled worker vide appointment letter Ex.D-6 against a regular permanent post. He was regularised on the said post on 22.5.1989. Mehar Singh was appointed on 30.5.1989. vide appointment letter Ex.D-8. Defendant no.2 Hoshiar Singh along with defendant No. 8 Suresh and defendant No.9 Darbara, were given designation of D.G.Set Operator/ Tubewell Attendant, Oilman/Attendant. This designation has to be appreciated in the light of attending facts and circumstances of the case. Defendants No. 4 to 7 were also given designation of Turbine Attendant seasonal permanent against sanctioned posts.

Apparently, re-designations were directed in order to prevent all these defendants from being shunted out in view of contemplated revised staff strength that was offered at the relevant time. Re-

designations to the defendants had been given vide Ex.D-11, Ex.D-12, Ex.D-18 to Ex.D-20, Ex.D-22, Ex.D-23, Ex.D-26, Ex.D-27 and Ex.D-29.

Cross-examination of DW-1 Balwant Singh, Establishment Clerk of the Sugar Mill is relevant in the context. No special cadre list was prepared for the said category of employees and the plaintiffs were ignored in the matter of promotion, whereas, their juniors were given promotions despite the fact that they were appointed in un-skilled category. Plaintiffs were appointed in semi-skilled category. The witness has admitted that Hoshier Singh was appointed for the first time on temporary basis on 29.6.1987 as an un-skilled worker. He was 8th class fail. Mehar Singh was appointed on 5.7.1989 as an un-skilled worker, who was 9th class passed. Mahabir was appointed seasonal permanent as an un-skilled worker on 1.1.1997 and he was 8th class failed. Balbir Singh was appointed as un-skilled worker on 5.7.1989 and he was 4th class passed. Gian Singh and Hakam Singh were appointed as an un-skilled workers on 5.7.1989. Similarly Suresh was appointed as an un-skilled worker on 27.6.1987 and Darbara was posted as unskilled worker on 29.6.1987, who

was illiterate. Plaintiff Ajmer Singh was appointed on 28.2.1985 as Motor Pump Operator/ Helper, which is a semi-skilled post and plaintiff Rampal was appointed on 20.2.1985 as Helper i.e. semi-skilled post as seasonal permanent. The witness further stated that plaintiffs are senior to defendants No.2 to 9 and the post of D.G.Set Operator is filled by way of promotion because their pay scale is more than Motor Pump Attendant.

In view of aforesaid statement of DW-1 Balwant Singh, defendants cannot say that defendants No.2 to 9 were given simple designation nor on account of any favouritism. The defendants could not point out as to how they were given promotion/ designation on the post of D.G.Set Operator and other equivalent posts over and above the plaintiffs.

c) It is relevant to mention here that presently, the plaintiffs are in the pay scale of ₹ 2900-75-EB-80-4550. Defendants are also in the same pay scale and their basic pay is ₹ 4,380/-. Before promotion, pay scale of Suresh was ₹ 800-1050/- and after his promotion he has been put in the pay scale of ₹ 900-1200/- and all the other defendants were put in a higher pay scale after their

promotion. Defendants No.2 to 9 have been getting retaining allowance of 50%. DW-1 has also admitted that defendants No.2 to 9 are in the pay scale of ₹ 2900-4550/- corresponding to their old pay scale of ₹ 900-1250 after revision of pay scale. Had the defendants been not promoted they would have been in the pay scale of ₹ 2750-4300/- in the corresponding pay scale of ₹ 800-1050/- . Apparently, defendants No.2 to 9 are getting pay scale of semi-skilled workers.

Defendant No.1 has virtually thrown rules and regulations regarding the matter of promotion in the wind. When revision of sanctioned strength took place, defendants No.2 to 9 have not been demoted or shown the door. Their designation was changed and have been posted on different posts.

(d) It has come on record that Hoshiar Singh is brother of the Superintendent and that is why he was given favourable treatment by giving out of way promotion-cum-designation in order to save his post in the low staff strength of the department of the sugar mill. However, DW-1 pleaded ignorance about the relationship of Hoshiar Singh with the superintendent but defendant No.6 Gian Singh, while

appearing as DW-2, in his cross-examination has admitted that Hoshiar Singh is real brother of Superintendent Surajbhan. Hoshiar Singh got number of promotions as per wishes of the management. DW-2 further stated that before making him as semi-skilled as he joined as un-skilled worker, he did not appear in any practical examination. However, he was promoted as Turbine Attendant on the basis of experience only. As per Ex.D3/1, the letter of revision of pay scales under Haryana Co-operative Sugar Mills Employees (Temporary) Pay Scales, which were effective from 1.7.2004, there were seven categories of officials. As per this list, un-skilled category was drawing pay scale of ₹ 800-1050/- which was revised in the pay scale of ₹ 2750-4300/-, whereas, semi-skilled workers were put in second category in the pay scale of 900-1250/- and on revision this pay scale arose up to ₹ 2900-4550/-. Therefore, there is clear demarcation vis-a-vis two separate categories of semi-skilled and un-skilled workers, who are drawing different pay scales.

(e) From Ex.D3/1, it is apparent that the plaintiffs were appointed in the year 1985 as semi skilled

workers and till date, they are on the same pay scales and were not given promotion, whereas, defendants No.2 to 9, who were admittedly appointed in un-skilled category, were promoted to the post of semi-skilled workers and were put in a higher pay scale of ₹ 900-1250 (old) and ₹ 2900-4550 (new). Therefore, contention of the defendants that they were not given promotion rather have been given designation is totally bereft of merits.

Defendants have also not placed on record separate cadre list of several officials with their seniority list. It appears that no rule and regulations were prevailing because as per Ex.D-15, Hoshier Singh was given designation of Tubewell and Spray Pump Attendant from his existing post of D.G.Set Operator-cum-Tubewell Attendant regular permanent. Similarly, defendant No.3 Mehar Singh, vide Ex.D-16, has also been given same designation of Tubewell and Spray Pump Attendant. Ex.D-19 i.e. order dated 13.2.2007 passed by the Sugar Mill shows that defendant No.4 Mahabir Singh, who was promoted from the post of Turbine Attendant to the post of Switch Board Attendant seasonal permanent, in the pay scale of ₹ 3450-5300/- and his earlier pay scale

was ₹ 2900-4550/-

Aforesaid facts are so glaring that the defendants are being treated for accelerated benefits over and above the plaintiffs, who have been placed under stagnation from the very inception and un-skilled workers have been brought in semi-skilled category over and above the plaintiffs and have been given preferential treatment for the reasons best known to defendant No.1. Now defendants are enjoying pay scale of ₹ 3450-5300/-, whereas, plaintiffs, who were much senior to them, are still in the pay scale of ₹ 2900-4550/- . The aforesaid anomalous situation is clear violation of principle of equity and natural justice and is hit by Article 14 of the Constitution of India.

14. The aforesaid features have been noticed by both the Courts in arriving at just conclusion that claim of the plaintiffs cannot be ignored particularly when un-skilled appointees/ defendants have been brought in the category of semi-skilled workers over and above the claim of the plaintiffs. Their posts were saved from the ambit of revised staff strength by giving them designation. Further designation in higher pay scale to the tune of ₹ 3450-5300 is an act of mala fide at the instance of defendant No.1, which clearly shows that there is no rule of law

prevailing in the Sugar Mill. The witnesses of the defendants have admitted the aforesaid glaring facts with reference to evidence.

15. The appellant, at the time of issuance of notice of motion, has pleaded before this Court that defendants were employed as daily wagers, un-skilled workers and before they were appointed/re-designated as D.G.Set Operator on seasonal permanent/ permanent basis, they continued to be on lower pay scale than the plaintiffs. Having considered the facts on record, the aforesaid plea seems to be mis-placed as the defendants are drawing scales of ₹ 3450-5300 on account of their evision from ₹ 2950-4550, which was the pay scale of the plaintiffs.

16. Learned counsel for the appellant, while filing the present second appeal, has framed the following substantial questions of law:-

“1. Whether under the facts and circumstances of the present case, *the respondents no.1 and 2 belonging to a separate cadre than that of respondent no. 3 to 10 can be given the post of the cadre of respondent no.3 to 10?*

ii) Whether under the facts and circumstances of the present case, the learned Courts below have erred in holding respondent no.1 & 2 entitled to the post of that of respondent no. 3 to 10, even though, as per

revised staff strength vide Annexure A-1 (Ex. D-3), no post is vacant in the separate cadre of D.G. Set Operator so claimed by the Plaintiff/ Respondents 1 and 2, is legally sustainable in the eyes of law?

iii) Whether under the facts and circumstances of the present case, the orders passed by the Courts below thereby holding respondent no.1 and 2/ plaintiffs entitled to the pay scale of that of respondent no.3 to 10, when the pay scale of respondent no.1 & 2 is more .than that of Performa respondent no. 3 to 10, is legally sustainable in the eyes of law?

iv) Whether under the facts and circumstances of the present case, the order passed by the courts below by exceeding their jurisdiction, even when the present dispute is governed by Industrial Disputes Act, 1947, is legally sustainable in the eyes of law ?

v) Whether under the facts and circumstances of the present case, the order passed by the Ld. Courts below is filled with conjecture and surmises?

vi) Whether under the facts and circumstances of present case the order passed by the Ld. Courts below is based on misappropriation of evidence and documents on record, is liable to be set aside?

vii) Whether under the facts and circumstances of

present case the order passed by the Ld. Courts below is filled with conjectures and surmises?”

17. Question No.1 does not arise inasmuch as that different categories of posts have been elaborately discussed by both the Courts below. Even if there is no cadre inter se prevailing between categories of the employees, this question does not arise. Question No.2 has explanatory note inasmuch as that revised staff strength to a particular strength has not been given effect by defendant No.1. In order to save the defendants from being subjected to the revised strength, designations were changed in an arbitrary manner and even the stand of the defendants is that no person shall be demoted or ousted on account of such revision. In view of aforesaid since un-skilled workers have been brought in the category of semi-skilled workers, therefore, inter se overlapping of categories would definitely give cause of action to the plaintiffs to claim promotion at par with the juniors, who have been brought from the category of un-skilled to the category of semi-skilled workers. Therefore, question No.2 has explanation in the present context. The revision of pay scale as discussed in preceding para gives rise to true picture of mala fide. Initial pay scales of un-skilled workers were less than that of semi-skilled but under the garb of designation they were placed over and above the pay scales of the plaintiffs and by virtue of placing

them in the category of semi-skilled now, plaintiffs have been ignored without there being any justifiable reasons. Hence, question No.3 has also explanatory note of record. Question No.4 does not arise. If defendant No.1 has violated the principles of natural justice and it is proved on record that no rule or procedure is existed in the affairs and management of the mill, Civil Court has got jurisdiction under Section 9 of CPC. Questions No.5 and 6 are the question of fact and do not arise.

18. Both the Courts below, have appreciated the controversy in its right perspective and therefore, re-appreciation at the hands of this Court is not legally permissible. Question No.7 does not arise as this question is not a question of law.

This Court has considered the submissions with reference to material on record. It appears that private defendants have been preferred due to obvious reasons as detailed in preceding paras and the claim of the plaintiffs cannot be allowed to be usurp by defendant No.1 under some calculated move and at their whims and fancies.

19. Consequently, this appeal is bereft of merit and the same stands dismissed. Judgment and decrees passed by the Courts below are upheld.

October 08, 2015

anita

**(RAJ MOHAN SINGH)
JUDGE**