IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.210 of 2014(O&M)
Date of decision: August 03, 2015

Jagan Nath Sharma and another ----Appellants

Versus

State of Haryana and others ----Respondents

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLE MR.JUSTICE HARNDER SINGH SIDHU

Present:- Mr.Madan Pal, Advocate
for the appellants.

Mr.Lokesh Sinhal, Addl. AG, Haryana.

Mr.Parminder Singh, Advocate.

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HARINDER SINGH SIDHU, J.

This intra-Court appeal under Clause X of the Letters Patent has been filed against the judgment dated 27.8.2012, whereby, CWP No.6478 of 2010 filed by the appellants challenging the office orders dated 15.01.2010 and 22.05.2009, rejecting their claim for promotion to the post of Assistant Excise and Taxation Officer, was dismissed.

The appellants were initially appointed as clerks on ad hoc basis. Appellant No. 1 was promoted to the post of Sr, Scale Stenographer on 4.12.1987, whereas appellant No.2 was promoted to the post of Assistant on 12.09.1985. They were also promoted to the post of Taxation Inspector on 16.08.1996 and 13.12.1991 respectively and confirmed on the said posts. Some time later due to some litigation, they were de-confirmed and reverted to the post of Senior Scale Stenographer and Assistant respectively vide order dated 17.08.2008. Thereafter appellant No.1 was promoted to the post of Superintendent Grade II.

It is undisputed that the appellants are senior to respondents No.3 to 6, who were promoted as Assistant Excise and Taxation Officers on 23.8.2006, but the appellants were not so promoted. The appellants moved an application under the Right to Information Act, they were informed that their claim for promotion as Assistant Excise and Taxation Officers was rejected on the basis that they do not possess the prescribed qualification of Graduation.

As per Rule 9(1) (b) of the applicable Rules, a quota of 6.2/3 % is prescribed for promotion from amongst the Assistants and Senior Scale Stenographers. As per Rule 9(2), all promotions shall be made on seniority-cum-merit basis and seniority alone shall not confer any right to promotion. The following qualification is prescribed for promotion to the post of Assistant Excise and Taxation Officer:-

"i) Graduate of a recognized University
ii) Three years Exp. as Taxation Inspector or Excise Inspector; or
iii) 10 years Exp. as Asstt/Senior Scale Stenographer"

Admittedly the graduation degree that was acquired by the appellants was a fake degree as the Madurai Hindi Vidyapeeth, from where the appellants have acquired the Bachelors degree was a fake University.

Before the Learned Single Judge, it was contended on behalf of the appellants that they possess Post Graduation degree in Arts from Madurai Kamaraj University, which is higher qualification than the minimum prescribed for the post. Reliance was placed on a letter dated 16.06.1979 of the Haryana Government wherein it was clarified that if a candidate possesses higher qualification in the same line and has passed the higher qualification in the same division as prescribed for the minimum qualification applicable to the post, then he shall be considered eligible for that post. Ld. Single held that appellants could derive no support from the said letter as the letter envisages acquiring the higher qualification in addition to possessing the prescribed qualification. In this case the appellants had acquired the higher post graduate qualification without obtaining the degree of graduation. This is because as per the rules applicable to the Madurai Kamraj University from where the appellants obtained their Post Graduate Degree, one need not be a Graduate to seek admission for Masters degree, but has only to pass the entrance test and no formal education is required.

The Learned Single Judge held that since the appellants did not possess the mandatory qualification of graduation as prescribed under the statutory Rules, they could not be considered to be eligible for promotion to the post of Assistant Excise and Taxation Officer. Accordingly the writ petition was dismissed.

We fully agree with the reasoning of the Ld. Single Judge. As per the applicable Rules the qualification of graduation is an essential qualification for promotion to the post of Assistant Excise and Taxation Officer. The appellants do not possess that qualification. Possession of a higher degree without possessing the essential qualification will not satisfy the requirement of the Rule.

Accordingly, finding no merit in the appeal, the same is dismissed.

(SATISH KUMAR MITTAL) **(HARINDER SINGH SIDHU)**
JUDGE **JUDGE**

August 3, 2015
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