

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Letters Patent Appeal No. 295 of 2015 (O&M)

Date of Decision : February 26, 2015

Gurmail Singh Appellant

Vs.

State of Punjab and others Respondents

CORAM :HON'BLE MR. JUSTICE SATISH KUMAR MITTAL.

HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

Present : Mr. Charanjit Sharma, Advocate
for the appellant.

* * *

DEEPAK SIBAL, J. :

C. M. No. 585-LPA of 2015 :

For the reasons mentioned in the application, which is accompanied by affidavit, the same is allowed and delay of 114 days in re-filing the appeal is condoned.

Main Appeal :

Through the present intra-court appeal, filed under Clause X of the Letters Patent, the appellant challenges before us the judgment dated 11.08.2014 passed by a learned Single Judge of this Court dismissing the writ petition bearing **C. W. P. No. 1543 of 2011** filed by

the appellant.

The appellant had approached this Court seeking a direction to the official respondents to amend final seniority list of Senior Assistants issued on 12.05.2003, as also to amend the subsequent list issued on 30.01.2007. The appellant had further prayed for the issuance of a direction to the official respondents to amend the final seniority list of Employment Generation and Training Officers issued on 25.06.2010 and modified on 08.11.2010 and to place him over and above Smt. Balbir Kaur – respondent no. 4. The appellant had further prayed for promotion as Employment Generation and Training Officer w.e.f. 30.12.2005 i.e. the date when respondent no. 4 – Balbir Kaur had been promoted. The writ petition was dismissed by learned Single Judge, with costs of Rs. 50,000/-, by holding as under :-

“ In the considered view of this Court, there has been acute concealment of facts by the petitioner thereby discrediting his entire claim which has to be negated solely on this ground. It is a settled principle of law that a person who does not approach the Court with clean hands, does not deserve any indulgence from the Court. It was for

the petitioner to set out all the facts clearly before the Court if he wanted the Court's interference in the seniority list against which he is aggrieved.

*The facts as indicated by respondent No.4 would certainly not enhance the case of the petitioner as he was placed much lower in pay scale before his absorption as Senior Assistant. In any case, without commenting on this controversy any further, I am of the considered view that the petition has to be dismissed solely on the ground that the petitioner has concealed the material facts from this Court. Even if he was confronted with the reply of the respondents, he made no attempt to rectify the situation but continued with his persistence by making submission on the basis of the assertions made in the petition. The Hon'ble Supreme Court in the case of **Ramjas Foundation and***

another vs. Union of India and others,
2011 (1) RCR (Civil) 176 has observed
as follows:

*“A person who does not
come to Court with clean hands
is not entitled to be heard on the
merits of his grievance and if
any case, such person is not
entitled to any relief is
applicable not only to the
petitions filed under Article 32,
226 & 136 of the Constitution
but also to the case instituted in
other Courts and judicial
forums. A litigant who attempts
to pollute the stream of justice
or who touches the pure
fountain of justice with tainted
hands is not entitled to any
relief, interim or final.”*

*The petition is, therefore,
dismissed and the petitioner is burdened*

with costs of ` 50,000/- for unnecessarily wasting the time of this Court by making a false assertion to the Court. The costs be deposited before the Mediation and Conciliation Centre of this Court.

In case the petitioner does not do so, the Drawing and Disbursing Officer of the petitioner shall ensure that these costs shall be deducted from his salary and deposited as indicated above.”

The main challenge of the appellant is to the final seniority list of Senior Assistants issued on 12.05.2003, which was later amended on 30.01.2007. The appellant had approached this Court in the year 2011 i.e. after eight years of the issuance of the final seniority list of Senior Assistants and over four years from the date of the subsequent amendment to that seniority list. No explanation for the said delay has been given.

A perusal of the writ petition filed by the appellant shows that the case set up by him is that he was appointed as a Senior Assistant on 10.12.1998 on regular basis, whereas respondent no. 4 Smt. Balbir Kaur was regularized as Senior Assistant on 01.07.2000.

It has thus been projected by the appellant that he is senior to respondent no. 4 – Smt. Balbir Kaur. If the written statement filed by respondent no. 4 is perused, to which there is no rejoinder by the appellant, it would be clear that the appellant was initially working on daily wages in the Department of Census. On the abolition of Census Department, the appellant was absorbed in the Department of Employment Generation and Training, as Senior Assistant, whereas other similarly situated persons like the appellant were absorbed as Clerks. The appointment of the appellant as Senior Assistant was thus challenged by those Clerks alleging discrimination. The above facts have nowhere been pleaded by the appellant. In fact, on a query posed by the Court, learned counsel appearing on behalf of the appellant admitted that the appellant was absorbed as Senior Assistant and that a writ petition had been filed by similarly situated persons against him, challenging his appointment, on the ground of discrimination. He further informed us that the writ petition had been allowed and that the Special Leave Petition (SLP) filed against that order had also been dismissed, but neither the order passed by this Court nor the order passed by the Apex Court in the SLP was produced in spite of repeated queries.

From the above, it is clear that the appellant had not disclosed the factum of his absorption. Rather he had sought to project

himself to be a direct appointee. He had also not disclosed the factum of the writ petition having been filed challenging his appointment. Further, the order passed in the writ petition, as also the order passed by the Apex Court in the SLP, has been withheld from the Court.

Even on merits, the learned Single Judge has held that at the time when the appellant was absorbed in the Department of Employment Generation and Training, respondent no. 4 was drawing higher pay than him and thus, could not be considered to be junior to the appellant.

In view of the above, on the ground of delay, having not approached the Court with clean hands, as also on merits of the case, we find no merit in the present appeal and resultantly, order dismissal of the same. However, taking lenient view in the matter, we modify the order impugned by the appellant only to the extent of deletion of the costs imposed on the appellant by the learned Single Judge.

(SATISH KUMAR MITTAL)
JUDGE

(DEEPAK SIBAL)
JUDGE

February 26, 2015
monika