

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 5230 of 2012 (O&M)

Date of decision : May 04, 2015

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Iqbal Singh

.....Appellant

Versus

The Jagraon Cooperative Sugar Mills Ltd., Jagraon and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Raj Kaushik, Advocate for the appellant.

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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

C.M No. 14646-47-C of 2012

For the reasons mentioned in the applications, delay of 4 days in filing and 501 days in re-filing the appeal is condoned.

C.Ms are allowed.

RSA No. 5230 of 2012

Present regular second appeal has been filed against the judgment dated 1.9.2009 passed by the Civil Judge (Junior Division), Jagraon, whereby the suit of the appellant-plaintiff (hereinafter referred to as 'the plaintiff') was dismissed and the judgment dated 20.1.2011 passed by Additional District Judge, Ludhiana, whereby the appeal filed by the plaintiff against the judgment of the trial Court was dismissed.

The plaintiff had filed the present suit for permanent injunction for restraining the defendant from enforcing/continuing enforcement of promotion order 7.9.1998, promoting Sh. Nachhattar

Singh-defendant no.3 from the post of cane supervisor to the post of cane development supervisor ignoring the right and seniority of the plaintiff.

Briefly the facts of the suit are that the plaintiff joined the services of defendant no. 1-Jagraon Cooperative Sugaar Mills Ltd. Jagraon as Surveyor on ad hoc basis at the salary of Rs. 700/- per month. He was made permanent on the same post and his pay was fixed at Rs.1000/- consolidated. After completion of the probation period, his services were confirmed vide order dated 18.6.1991 along with other employees. Nachhattar Singh was appointed as Cane Surveyor along with three employees namely Kuldip Singh, Avtar Singh and Bhag Singh vide order dated 6.2.1991 w.e.f 1.2.1991. Vide order dated 7.9.1998 defendant no.3- Nachhattar Singh was promoted from the post of Cane Surveyor to the post of Cane Development Supervisor. It was assailed by the plaintiff that defendant no.3 has been promoted despite the fact that he was junior to the plaintiff and claimed that he should be promoted w.e.f 7.9.1998 with all the consequential benefits which are attached to the the promotion.

Parshottam Singh, the witness of the department appeared as DW-1 and stated that no work is going on in the sugar mill and employees are not being regularly paid their wages. The plaintiff has concealed the length of his daily and ad hoc service. He was appointed on daily wages on 15.3.1988, whereas the defendant no.3 was appointed in the same category on 1.3.1998. Defendant no. 3-Nachhattar Singh was regularized on 14.6.1990 and the

plaintiff was regularized on 15.6.1990. The appellant was charge sheeted vide letter dated 7.6.1995 and was suspended pending enquiry whereas the work and conduct of defendant no.3 was without any blot and the promotion was made on the basis of merit-cum-seniority. The appellant was not senior to the defendant no.3. The committee considered the case of the plaintiff and defendant no.3 and after considering the same, defendant no.3 was promoted on the basis of merit-cum-seniority. The order of promotion of defendant no.3 is legal and valid. The plaintiff has been again suspended due to his misconduct vide order dated 16.2.2002 and punished whereby his annual increment has been stopped vide order dated 7.2.2003 by the Managing Director of the mill. Charge sheet dated 7.6.1995 has been proved as Ex. D3, Show cause notice dated 10.1.2002 as Ex. D.4, another show cause notice as Ex. D5, Suspension order dated 16.2.2002 as Ex. D-6, punishment order dated 7.2.2003 as Ex. D-7.

Keeping in view the service record of the plaintiff, date of birth of plaintiff is 1.8.1965, whereas the date of birth of defendant no. 3-Nachhattar Singh is 1.1.1958. Plaintiff was an undergraduate whereas defendant no.3-Nachhattar Singh was a Graduate complete. In the present case, the services of both defendant no.3 and plaintiff were regularized on 14.6.1990 and 15.6.1990 respectively. As per the service rules if two officials are appointed on the same date then their qualification has to be seen for the purpose of determining their seniority. Plaintiff was an undergraduate, whereas Nachhattar Singh was a graduate complete. Moreover date

of birth of plaintiff was 1.8.1965 and date of birth of defendant no. 3-Nachhattar Singh is 1.1.1958. In view of the above facts, Nachhattar Singh was senior to the plaintiff being more qualified and elder in age. Service record of the plaintiff was satisfactory as per the charge sheet dated 7.6.1995 Ex.D3, Suspension order dated 16.2.2002 Ex. D-6 and punishment order dated 7.2.2003 Ex. D-7. Hence the suit of the plaintiff has been rightly dismissed by both the Courts for grant of promotion.

In the light of the above discussion, there is no illegality or infirmity in the judgments passed by the Courts below. No substantial question of law arises for consideration in this regular second appeal. Hence the same is dismissed.

May 04, 2015
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(**RITU BAHRI**)
JUDGE