

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 537 of 2012 (O&M)
Date of decision:- 04.08.2015

Haryana State Agriculture Mktg. BoardAppellant

Versus

Om Parkash Nain & anr. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Naveen Gupta, Advocate
for the appellant.

Mr. Raman B. Garg, Advocate
for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

Feeling aggrieved against the concurrent findings of facts recorded by both the Courts below, decreeing the suit of plaintiff/respondent No. 1 (for short 'respondent No. 1') , the defendant-Board (for short 'the appellant') has come up in regular second appeal.

Respondent No. 1 who was regular employee of the appellant was posted as Mandi Supervisor cum fee Collector in the office of Market Committee, Narwana. He was appointed on the said post on 11.11.1969. Respondent No. 2 was appointed as auction recorder in Market Committee, Narwana on 15.11.1968 in the pay scale of 60-4-100 and was transferred to Market Committee, Safidon on 18.07.1990 and on 15.11.1972, respondent No. 2 was

promoted as fee collector and was thus junior to respondent No. 1, who was appointed on the said post on 11.11.1969. The name of respondent No. 1 in the senior list was at Sr. No. 53, whereas respondent No. 2 was placed at Sr. No. 201 on 01.12.1998. By virtue of Section 20 (1) (c) of the Punjab Agriculture Markets Acts, 1961, all the Class III employees of Market Committee of Haryana State were deemed to have been appointed by the Board and accordingly, respondent No. 1 as well as respondent No. 2 were deemed to be in service of the appellant from the date of their appointment. In the month of March, 2006, respondent No. 1 came to know that his junior Kali Ram Naidu was promoted as accountant w.e.f 4.1.1971, vide order dated 8.5.2003 whereas his junior Balwant Rai, Fee Collector, Market Committee, Radaur was promoted as accountant w.e.f 4.1.1971. The seniority of the inter-se of the member of the service is fixed as per length of their continuous service on a post in the service as per Rule 12 of the Haryana State Agricultural Marketing Board Service Rules, 1974. Respondent No. 1 was entitled to get promotion on non-selection post of Accountant from 4.1.1971 at par with the date of promotion of his junior Kali Ram Naidu.

The trial Court decreed the suit of respondent No. 1 and he was entitled to get promotion of Accountant w.e.f 04.01.1971 and further retrospective promotion from time to

time at par with the promotion given to his junior i.e respondent No. 2 in relevant scales applicable to that post and he was further held entitled to receive all the arrears of pay from the date of his retrospective promotions along with interest @ 6% per annum to be calculated on the said amount from 01.04.1971 till recovery.

On appeal filed by the appellant as well as by respondent No. 1, the lower Appellate Court partly accepted the appeal filed by the appellant and appeal filed by respondent No. 1 was also accepted. Respondent No. 1 was entitled to retrospective promotion w.e.f 4.1.1971 i.e the date his junior Kali Ram Naidu was promoted and on the same post with all consequential benefits up to 8.7.1998 at the rate of 12% per annum till realization.

The Lower Appellate in para 17 of the judgment has observed that as per Ex P 20, i.e letter of the department, some of the employees namely Kartar Singh was given retrospective promotion w.e.f 2.9.1986 and Mani Ram w.e.f 29.06.1983 and other employees were given retrospective promotion. Ex P21 is the letter of the Board which proves that Parmod Kumar Auction Reader was given promotion w.e.f 1.4.1982. It was further admitted that Hardeep Singh Mandi Supervisor was given retrospective promotion w.e.f 4.1.1971 vide order dated 18.09.1995. For claiming parity, reliance was placed upon the judgment of

Hon'ble the Supreme Court in a case of ***K.T. Veerappa and others vs. State of Karnataka and others 2006(2) RCJ 773*** where it was held that the benefit having been given to 23 employees in compliance with the decision of the High Court, it was expected that without any resorting to any of the methods, the other employees identically placed, including the appellants would have been given the same benefit.

The argument of learned counsel for the appellant that respondent No. 1 had not made representation in the year 1996 when Kali Ram Naidu had made representation, was held to be devoid of any merits, as at that time Kali Ram Naidu was not given retrospective promotion, as such, respondent No. 1 had no opportunity to give representation. Respondent No. 1 made representation on 01.04.2006 and even served a legal notice and the said representation and a legal notice of respondent No. 1 has not been decided so far.

Further the objection of the appellant was that respondent No. 1 had given an affidavit dated 08.07.1998 to the Board that he was not interested to get promotions to the post of Accountant/Assistant Secy/EO-cum-Secy in future. So, he is estopped by his own act and conduct. Keeping in view the above said affidavit, the lower Appellate Court has modified the judgment of the trial Court as mentioned above.

Learned counsel for the respondents has referred to a case i.e R.S.A No. 2358 of 2010, decided on 10.03.2014 by a Co-ordinate Bench of this Court whereby on an appeal filed by the present appellant against the similarly situated employee i.e Dharam Paul claiming parity with Kali Ram, was dismissed by this Court. Reference was made to a case filed by Kali Ram before Hon'ble the Supreme Court i.e C.A No. 1585 of 2003 whereby he had given up his claim for arrears but the perusal of the judgment passed by Hon'ble the Supreme Court makes it very clear that any concession given by his junior Kali Ram, given up his claim for arrears will be ipso facto binding on the respondent.

Learned counsel for the respondents has further informed the Court that the appellant has not filed any appeal before Hon'ble the Supreme Court against the judgment passed by this Court in Dharam Paul's case (supra), thus this judgment attained finality.

On merits, this appeal requires to be dismissed. However, the rate of interest can be decreased in view of the judgments of Hon'ble the Supreme Court in case of ***D.D. Tewari (D) through LRs vs. UHBVNL and others, 2014(4)SCT 128 and Megh Varan Sharma vs. State of U.P and others, 2015(1) SCT 12.***

Applying the ratio of the above mentioned judgments, the appeal stands disposed of and the judgment

passed by the Lower Appellate Court is modified to the extent that respondent No. 1 was entitled to retrospective promotion w.e.f 4.1.1971 i.e the date his junior Kali Ram Naidu was promoted and on the same post with all consequential benefits up to 8.7.1998 at the rate of 9% (instead of 12%) per annum till realization.

04.08.2015
G Arora

(RITU BAHRI)
JUDGE