

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 397 of 2013 (O&M)

Date of decision : March 10, 2015

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Ram Chhabila Tiwari

.....Appellant

Versus

P.S.E.B and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Ms. Satpreet Grewal, 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

This regular second appeal has been filed against the judgment dated 28.7.2012 passed by the Additional District Judge, Gardaspur, whereby the appeal against the judgment and decree dated 25.10.2010 passed by Civil Judge (Junior Division), Batala has been dismissed.

Plaintiff had filed a suit seeking promotion to the post of Lower Division Clerk w.e.f 20.4.1984 when the defendant no.4 who was the junior to the plaintiff was promoted as Lower Division Clerk and promotion to the post of Upper Division Clerk w.e.f 17.10.1996 when the defendant tno.4 who is junior to the plaintiff was promoted to the post of Upper Division Clerk with a further prayer to step up his

salary by giving increments to enable him to draw salary more than defendant t no.5 who is junior to the plaintiff.

Plaintiff was appointed as Officiating Chowkidar on 18.5.1977. He was regularized as Chowkidar w.e.f 22.5.1978 and he was given seniority No. 505 as Chowkidar. He was promoted as Bill Distributor on 22.5.1978 by XEN City Division, Batala and he was given seniority No. 368 as Bill Distributor. He was promoted as Provisional Lower Division Clerk vide office order No. 291 dated 2.6.1993. He was regularized as Lower Division Clerk on 19.6.1996. Defendant no.4 was appointed as ad hoc Chowkidar on 4.5.1978 and his services were regularized as Chowkidar w.e.f 20.11.1978 and his seniority no. as Chowkidar was 596. He was promoted as Lower Division Clerk w.e.f 20.11.1978. Thereafter he was promoted as Upper Division Clerk vide order dated 17.10.1996 by ignoring the plaintiff from promotion despite being senior from him. Plaintiff made representations and defendant no.2 rejected the same vide order dated 29.6.2000. Defendant no.5 joined as Sewadar after the joining of the plaintiff as a Chowkidar. Both were working as Lower Division Clerk in the same circle but defendant no.5 was getting more salary as compared to the salary of the plaintiff and hence as per the instructions of the Board, the plaintiff was entitled to get more salary than that of defendant no.5.

On notice, the defendants appeared and filed a written statement and took the stand that plaintiff was entitled to be promoted as Lower Division Clerk as per the Punjab State Electricity

Board Rules and Ministerial Services Class III Regulations, 1985 of the Punjab State Electricity Board and as per its provisions, the person who was to be promoted from Class IV to Lower Division Clerk must possess minimum qualification having knowledge of Punjabi up to matric standard and for this category there was a 15% quota fixed and 2% quota was fixed for graduates with two years service as Class IV employee. Defendant no.4 was a graduate and he was promoted as Lower Division Clerk under the 2% quota reserved for class-IV employees who were graduates. Plaintiff was entitled to get promotion under the 15% matriculation quota along with knowledge of Punjabi up to matric standard. The plaintiff was given promotion as Lower Division Clerk only after he had passed Punjabi up to matric standard.

The trial Court after going through the evidence led by the parties, dismissed the suit of the plaintiff as defendant no.4 had produced his matriculation certificate with Punjabi Pass as Ex. DC and copy of B.A certificate as EX.DD. He was promoted as LDC under 2% quota reserved for graduate class IV employees. Plaintiff can't claim parity with defendant no.4 on this account. Defendant no.5 produced his matriculation certificate as Ex. D1 and Punjabi pass certificate up to matriculation level as Ex. D-2. He had passed his matriculation in the year 1975 and then Punjabi pass certificate Ex. D2 reveals that he had passed Punjabi up to matriculation standard in the year 1980. The plaintiff passed his Punjabi up to matriculation standard in the year 1987. Therefore, under the rules,

Plaintiff was not entitled to be promoted prior to defendant no.5 Budhi Singh. No illegality was found in the promotion of defendants no. 4 & 5. The claim of the plaintiff for promotion to the post of Upper Division Clerk was rejected as he had not produced any evidence that he had passed Departmental Accounts Examination which was essential for the promotion to the post of Upper Division Clerk. At the time of promotion of defendant no. 4 to the post of Upper Division Clerk, the plaintiff had not completed six years of service as LDC and he could not be considered along with defendant no.4 at the time of promotion as UDC. Further Punjab State Electricity Board Rules and Ministerial Services Class III Regulations, 1985 of the Punjab State Electricity Board provide that for the post of Upper Division Clerk, 40% of vacancies are to be filled by way of direct recruitment and 40% of vacancies are to be filled by way of promotion from amongst the LDCs with qualification of three years' service experience as LDC and after qualifying the departmental accounts examination for ministerial establishment and then 20% of vacancies are to be filled by way of promotion from amongst the LDCs who are not able to pass departmental accounts examination, but they must possess the minimum qualification of six years service experience in case of matriculate LDC and 3 years service in case of graduate LDC. The suit of the plaintiff was dismissed and the appeal against the judgment of the trial Court was also dismissed by the lower Appellate Court.

A perusal of the judgments passed by both the Courts

shows that the promotion of respondents no. 4 & 5 have been made to the post of LDC and UDC in accordance with the Punjab State Electricity Board Rules and Ministerial Services Class III Regulations, 1985 of the Punjab State Electricity Board. No promotion was made against the prescribed conditions under the Regulations for the post of LDC and UDC. The suit of the plaintiff has been rightly dismissed. The plaintiff could not be promoted prior to the juniors as he had not passed matriculation examination prior to 1987 and for the post of UDC he did not had the requisite experience nor did he passed the departmental accounts examination.

In view of all that has been discussed above, no substantial question of law arises for consideration in this regular Second appeal. Hence the same is dismissed.

March 10, 2015
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(**RITU BAHRI**)
JUDGE