

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 1260 of 2014

Date of decision : May 26, 2015

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Manohar Lal Yadav

.....Appellant

Versus

Chairman, Power Utilities,
Haryana Shakti Bhawan, Sector-6, Panchkula and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Rajesh Arora, 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

The appellant-plaintiff (hereinafter referred to as 'the plaintiff') has come up in a regular second appeal against the judgment dated 30.5.2013 passed by the Civil Judge (Junior Division) Gurgaon, whereby the suit of the plaintiff has been dismissed and the judgment dated 8.11.2013 passed by Additional District Judge, Gurgaon, whereby an appeal against the judgment of the trial Court has been dismissed.

The plaintiff was appointed in the Haryana State Electricity Board (for short HSEB) as Commercial Assistant on 24.3.1970 and was promoted as Circle Assistant on 11.5.1981. He

was further promoted as Head Clerk on 17.7.1985 and then as Circle Superintendent on 20.4.1989. In the seniority list dated 2.11.1989, the name of the plaintiff stood at Sr. No.1. Thereafter HSEB had been bifurcated into four Nigams i.e Dakshin Haryana Bijli Vitran Nigam, Uttar Haryana Nigam, Haryana Power Generation Corporation and Haryana Vidyut Prasaran Nigam Ltd. w.e.f 1.7.1999 under the Haryana Electricity Reforms Act, 1997. The said bifurcation took place in the year 1999. The plaintiff was allocated to Dakshin Haryana Bijli Vitran Nigam Limited in the year 1999. The Haryana Electricity Reform (Transfer of undertakings, assets, liability, proceedings and personnel) Rules, 1998, Chapter 1 Rule 6 sub Para 11 (a) provides as under:

“6. Transfer of personnel (Section 24 & 55)

(11)the transfer of personnel shall be subject to the following conditions:

(a) The terms and conditions of the services applicable to them on the effective date, the pay, pattern of Dearness Allowances, Additional Dearness Allowances, Interim Relief, City Compensatory Allowances, House Rent Allowances, Shift Duty Allowances, Hardship Allowances, Medical Facility, Medical Allowances, all other allowances on the projects, field and head office, head of all kinds (including casual leave), Pension and Death-cum-retirement

benefits, gratuity and leave encashment of every nature shall not be in any way be less favourable to them than those applicable to them immediately before such date.”

The plaintiff was claiming promotion to the post of Administrative Officer claiming parity with one Sh.Banarsi Dass Sharma who was working in the Thermal Organization at Panipat and had been appointed as Commercial Assistant in the HSEB on 15.12.1978 i.e after more than 8 years of the appointment of the plaintiff. After bifurcation he was serving in the HPGCL, where he was promoted as Administrative Officer on 21.5.2004. The plaintiff was claiming parity with Banarsi Dass Sharma as per Rule 6 of the Haryana Electricity Reform (Transfer of undertakings, assets, liability, proceedings and personnel) Rules, 1998 on the ground that he being senior to Banarsi Dass Sharma should be given promotion to the post of administrative officer after creating supernumerary post of administrative officer. He has placed reliance on judgment dated 7.2.2007 passed in the case of “Shri G.N Gautam vs. HPGCL and others”.

The defendants in the written statement took the stand that the seniority list dated 23.11.1989 has become infructuous in view of the fact that the erstwhile HSEB has been bifurcated into two companies i.e HPGCL and HVPNL and thereafter HVPNL was further divided into three companies i.e HVPN, DHBVN, UHBVN. Therefore the combined seniority list is being maintained. Sh. Banarsi Dass is

working in HPGCL. At the time of formation of separate Nigams, every employee had the option to opt for any of the four Nigams. The plaintiff at that time preferred to stay with the DHBVNL. Thus he cannot claim any parity with Mr. B.D Sharma who opted to be in HPGCL. Once the plaintiff had exercised the option to be in DHBVN where there was no post of administrative officer, he cannot claim creation of supernumerary post. It was admitted that G.N Gautam was granted benefit to be promoted as Under Secretary but the Hon'ble Supreme Court while dismissing the SLP has stated that the said decision shall not operate as a precedent. The plaintiff had filed a writ petition in this Court, which was disposed of on 26.2.2007 by giving direction to the respondents to decide the legal notice given by the plaintiff. The said notice was disposed of vide office order dated 13.8.2007 and the said order has not been challenged by the plaintiff and has thus attained finality.

After going through the evidence led by the parties, both the Courts held that the plaintiff cannot derive any benefit from the case of G.N Gautam as Hon'ble Supreme Court has categorically stated that it shall not be treated as precedent. Moreover at the time of bifurcation of HSEB, every employee had the option to opt for any of the four Nigams. The plaintiff at that time opted for DHBVNL wherein there was no post of Admn. Officer. The seniority list which was maintained by the HSEB ceased to exist. Since the seniority list was being maintained separately company wise the plaintiff cannot claim any parity with the promotion of Banarsi Dass Sharma and the

suit has been rightly dismissed by both the Courts below. Learned counsel for the appellant has placed reliance upon the judgment of Hon'ble the supreme Court in the case of **State of Haryana and others vs. Rameshwar Dass, 2009 (7) SLR 645**, wherein it was held that promotion cannot be denied to senior employee on the ground that the promoted employees belonged to different divisions. State did not classify the employees as per cadre or division. Senior cannot be denied promotion. It was held that a junior in a separate division cannot be promoted ignoring a senior. This judgment is not applicable to the facts of the present case. After bifurcation, employees were allocated to the Nigams as per their options.

A perusal of ***Haryana Electricity Reform (Transfer of undertakings, assets, liability, proceedings and personnel) Rules, 1998, Chapter 1 Rule 6 sub Para 11 (a)*** as reproduced above shows that the terms and conditions of the Service with regard to pay pattern was not to be altered to the disadvantage. This rule did not state that the right to promotion had also been protected as per the above said Rules. The judgments of both the Courts do not require any interference as no substantial question of law arises for consideration in this regular second appeal.

In view of all that has been discussed above, present regular second appeal is dismissed.

May 26, 2015
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(RITU BAHRI)
JUDGE