

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA NO. 4457 OF 2015 (O&M)
DECIDED ON : 02.09.2015**

Dakshin Haryana Bijli Vitran Nigam Limited and others

... Appellants

versus

Radhey Shyam Goswami

... Respondent

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Pankaj Jain, Advocate, for the appellants.

K. C. PURI, J.

Challenge in this appeal is to the judgment and decree dated 17.04.2015 passed by Shri Harnam Singh Thakur, District Judge, Gurgaon, vide which the appeal preferred by the appellant/respondent against the judgment and decree dated 30.09.2014 passed by Shri Mahender Singh, Civil Judge (Junior Division), Sohna, was partly allowed.

Briefly stated, Radhey Shyam Goswami-plaintiff now respondent filed a suit for declaration against the Dakshin Haryana Bijli Vitran Nigam Limited (in short “the DHBVNL”) to the effect that plaintiff was earlier appointed as Junior Draughtsman (JDM) in erstwhile Haryana State Electricity Board, Chandigarh. Later on he was promoted as

Draughtsman vide order No.31 dated 30.03.1983. He was further promoted as Divisional Head Draughtsman vide order dated 17.07.2005. He is presently posted as Divisional Head Draughtsman in the office of defendant No.4. In view of the circular issued by the Government, the plaintiff is entitled to stepping up of his pay w.e.f 01.11.1985 at par with his junior Inder Singh and he is also entitled to arrears of the same. The plaintiff asked the defendants many a times to step up his pay but the same was not done. Hence, the suit was filed.

Upon put to notice, defendants appeared and filed joint written statement taking preliminary objections qua maintainability; locus standi; cause of action and jurisdiction. On merits, it was submitted that circular dated 05.03.2009 was not valid in the case of plaintiff as Inder Singh was employee of HVPN and plaintiff is employee of DHBVN. The other averments were denied.

Replication was filed reiterating the stand taken in the plaint and denying the averments made in the written statement.

From the pleadings of the parties, following issues were framed :-

- 1) Whether the plaintiff is entitled for stepping up of his pay at par with his junior counterpart of reserved category ?
OPP
- 2) If it is proved, whether plaintiff is entitled for relief as claimed for ? OPP
- 3) Whether the suit of the plaintiff is not maintainable in the present form ? OPD
- 4) Whether the plaintiff has no locus standi to file the

present suit ? OPD

- 5) Whether the suit is bad for non-joinder and misjoinder of necessary party ? OPD
- 6) Whether the civil court is having no jurisdiction to entertain and try the present suit ?OPD
- 7) Relief.

6. The parties have led their respective evidence on the aforesaid issues. The trial Court after appraisal of the evidence decreed the suit of the plaintiff vide judgment and decree dated 30.09.2014.

7. Feeling aggrieved, both plaintiff and defendants preferred separate First appeals. The learned District Judge, Gurgaon vide common judgment and decree dated 17.04.2015 partly accepted the appeal of the plaintiff whereas dismissed the appeal preferred by the defendants.

8. Still feeling dissatisfied with the aforesaid judgments and decrees dated 30.09.2014 and 17.04.2015, the present regular second appeal has been directed by the defendant/appellant.

9. The appellant in paragraph No.12 of the grounds of appeal, has mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- i) Whether the plaintiff is entitled for interest at the rate of 6% or at the rate of 9% per annum as per Section 35 CPC ?
- ii) Whether the present suit for mandatory injunction is maintainable or the plaintiff ought to have filed a suit for recovery ?
- iii) Whether the learned courts below erred in misreading the evidence on record and thus the impugned judgment and decrees deserves to be set aside ?

iv) Whether the suit is bad for nonjoinder of necessary party ?

10. I have heard learned counsel for the appellant and have gone through the case file.

10. It is settled law that second appeal lies only in case any substantial question of law has arisen. The only point urged during the course of arguments is that Inder Singh is the other junior employee, had joined that HVPNL whereas plaintiff was employee of DHBVNL and as such both cannot be equated with each other regarding stepping up. This argument was also raised before both the Courts below but did not find favour by both the Courts below. There is nothing on the record that the said finding is the result of misreading and misinterpreting the evidence on the file. Inder Singh was junior and he has been granted stepping up. The interest @ 9% per annum allowed by the Appellate Court cannot be said to be on higher side. The suit for mandatory injunction directing the defendants to stepping up from the date junior was given step up lies. So, I have no hesitating in holding that no substantial question of law has arisen in the present appeal.

11. Consequently, the appeal is without any merit and the same stands dismissed.

12. A copy of this judgment be sent to the trial Court for strict compliance.

**(K.C.PURI)
JUDGE**

September 02 , 2015

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