

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.302 of 2014 (O&M)

Date of Decision: 26.08.2015

Sunder Singh

..APPELLANT

VERSUS

Uttar Haryana Bijli Vitran Nigam Ltd. and others

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

PRESENT:Mr. G.K.Chawla, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J

Suit for declaration to the effect that the appellant-plaintiff is entitled to grant of one additional increment on completion of 8 years of service w.e.f. 01.01.2002 and to grant of 1st ACP Scale of ₹ 4500-7000 along with arrears and allowances from the date of accrual i.e. 01.01.2004 till realization with interest @ 18% per annum, had been filed by the appellant. The suit was dismissed by the Civil Judge (Junior Division),Gurgaon on 25.10.2012. The appeal preferred against the same was dismissed on 19.09.2013 by the Additional District Judge, Gurgaon. These judgments and decree passed by the Courts below are subject of challenge in the present appeal.

It is the contention of the counsel for the appellant that Clause 10 imposed in the offer of appointment dated 27.12.1993 (Ex. PC-3), which mandates the passing of the type test in English/Hindi at the prescribed speed of 30/25 w.p.m. respectively within a period of two years from the date of joining in four chances with a further rider that on failing to do so, annual increment will be stopped and services will be regularized from the date of passing the required type test, cannot sustain as the same is in violation of the Statutory Rules/Regulations applicable to the post of Lower Division Clerk, on which he was appointed on compassionate grounds. His further contention is that the non-grant of ACP and other increments because of non-passing of the type test within the period of two years, denying the appellant regularization and the consequential grant of ACP Scale after the completion of 10 years regular service, which has been taken from the date of passing of the type test i.e. 04.10.2004, cannot be sustained entitling him to the benefit of grant of arrears. The findings recorded by the Courts below thus, cannot sustain and deserve to be set aside. He has placed reliance upon the judgment passed by this Court in the case of **Prem Chand and another vs. The State of Haryana and others**, 2010 (4) RSJ 694 in support of his submissions. He, therefore, contends that the present appeal be allowed by setting aside the judgments and decree passed by the Courts below.

I have considered the submissions made by the counsel for the appellant-plaintiff and have gone through the judgments

passed by the Courts below.

A perusal of the plaint, which has been produced by the counsel for the appellant, would show that not a word has been mentioned in the plaint indicating that Clause 10 of the offer of appointment dated 27.12.1993 is in violation of any Statutory Rules/Regulations. None of the Statutory Rules/Regulations has been referred to, which would indicate that Clause 10, as imposed in the offer of appointment, is in violation thereof nor has anything come on record in the evidence, which would indicate that such a stand was ever taken by the appellant-plaintiff. What has been asserted in the plaint and in the evidence is that the appellant is entitled to the grant of increments and other benefits such as the Assured Career Progression Scale by treating the service as regular from the date of he having joined service i.e. December, 1993. The contention thus, raised by the counsel for the appellant-plaintiff cannot sustain.

Clause 10 as per the offer of appointment dated 27.12.1993 Ex. PC-3 reads as follows:-

“Clause-10: “You will clear the type test in English/Hindi at prescribed speed of 30/25 w.p.m. respectively within a period of two years from the date of joining in four chances, failing which your annual increment will be stopped. Your services will be regularized from the date of passing the required type test.”

The Clause itself is clear, which does not require any interpretation. It is also not in dispute that after passing of the type test, the appellant-plaintiff has been granted the requisite reliefs as

per his entitlement. The findings, thus, recorded by the Courts below, on the basis of the evidence produced by the parties, cannot be said to be not in accordance with law.

The judgment relied upon by the counsel for the appellant-plaintiff (Prem Chand's case supra) would not be applicable to the case in hand. Firstly, it was based upon a different set of Rules i.e. The Haryana State Agricultural Marketing Board Service Rules, 1974. Rule 10 of the said Rules dealt with the recruitment by promotion to the post of Clerk from Class-IV employees where, on the basis of the executive instructions, a condition was incorporated in the promotion order requiring of the type test, failing which annual increments were not to be released. The said condition was said to be based upon no statutory backing hence not sustainable, whereas in the present case, no Statutory Rules/Instructions have been placed on record to support such a contention.

In the light of the concurrent findings recorded by the Courts below, this Court is not inclined to interfere in the present appeal especially when there is no substantial question of law involved in the same.

The appeal, therefore, stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

August 26, 2015

pj