

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 4809 of 2014 (O&M)
Date of decision:- 10.03.2015

State of Haryana & others ...Appellants

Versus

Ravi Kumar ...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. D.R. Singla, DAG, Haryana

RITU BAHRI J. (Oral)

C.M. No. 11305-C of 2014

For the reasons mentioned in the application,
delay of 196 days in filing the present appeal is condoned.

The application stands disposed of accordingly.

Main case

This regular second appeal is against the judgment and decree dated 11.11.2013 passed by learned District Judge, Sirsa whereby the appeal filed by the appellant against the judgment and decree dated 14.05.2011 passed by learned Civil Judge (Jr. Divn.) Sirsa whereby the suit of the plaintiff-respondent was partly decreed, was dismissed by the lower Appellate Court.

Ravi Kumar-plaintiff-respondent filed a suit for declaration to the effect that he is legally entitled to first ACP from October 2003 and is also entitled to get arrears

arising out of the same and further order dated 20.01.2009 passed by defendant No. 3 is illegal, null and void. Further relief is being sought directing the respondents/appellants to release first ACP from due date along with interest @ 18% per annum till the date of realization.

The respondent/plaintiff joined the department on 19.08.1988 as Sewadar and promoted as Clerk on 15.10.1993. Vide order dated 20.01.2009, the department declined to grant him the relief of first ACP Scheme. The plaintiff-respondent was contending that after completion of ten years regular satisfactory service. The relief was granted to him by the department on 01.01.2006 and he is seeking from October, 2003 on completion of 10 years of regular service. As per Government Instructions (Ex PX), it is clear that an employee entitled to the grant of first ACP after completion of his ten years regular satisfactory service and the case of the plaintiff-respondent was squarely covered by the instructions. Issue No. 1 with regard to order dated 20.01.2009, was held to become infructuous as order dated 20.01.2009 stands modified and the first ACP has been granted to the plaintiff w.e.f 01.01.2006 and issue Nos. 2 and 3 were decided partly in favour of the plaintiff. Issue Nos. 4 to 6 were decided against the defendants. The suit of the plaintiff was partly decree and appellants/defendants

were directed to pay first ACP scale to the plaintiff from October, 2003 along with arrears of the same with interest @ 9% per annum from the due date till its realization.

On appeal, the lower Appellate Court affirmed the judgment passed by the trial Court, vide judgment dated 11.11.2013.

Learned counsel for the appellant submits that the respondent joined as peon on 19.08.1988 and was promoted to the post of Clerk on 15.10.1993. The Haryana Civil Services (ACP) Rules, 1988 came in to being in 1988 and were made effective w.e.f 01.01.2006 and as per these Rules, the functional pay scale as on 31.12.1995 of the post against which the Government servant joined as fresh entrant through direct requirement as on 31.12.1995 has to be kept in view for grant of any ACP scale subject to fulfillment of other eligibility criteria specified in the said rules. It was necessary for the plaintiff-respondent to pass the typing test for promotion, is hereby rejected as 1996 Service Rules were not applicable in the case of the plaintiff as he was promoted as Clerk on 15.10.1993 and at that time, 1975 Rules were applicable. Reference has been made to CWP No. 18333 of 2002 titled as Tilak Raj vs. State of Haryana and others, decided on 16.08.2005 wherein it has been held as under:-

“Admittedly, respondent No. 4 was promoted in 1995 i.e at the time when the Rules of 1975 were in operation. To our mind, it is therefore, clear that the case of the petitioner would have to be dealt with under the Rules of 1975 and the stand of the respondent that he was covered by Rules of 1998 is clearly untenable. We, therefore, quash the impugned order annexure P-8 and direct the respondents to reconsider the case of the petitioner for promotion in this background from the date when respondent No. 4 had been promoted. The entire exercise will be completed within four months from today. Should the petitioner succeed in getting promotion, the respondents shall consider his claim towards the grant of consequential relief as well. Disposed of in the aforesaid terms.”

In view of the judgment passed by this Court in Tilak Raj's case (supra), the judgments passed by both the Courts below, calls for no interference. No substantial question of law arises for adjudication by this Court.

Accordingly, regular second appeal is dismissed

March 10, 2015
G Arora

(RITU BAHRI)
JUDGE