

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

* * * * *

RSA No. 536 of 2014 (O&M)

Date of decision : July 14, 2015

* * * * *

Ashok Kumar

.....Appellant

Versus

Union of India and others

.....Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

* * * * *

Present: Mr. Virender Kumar, Advocate for the appellant.

* * * * *

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

C.M No. 1299-C of 2014

C.M is allowed.

For the reasons mentioned in the application, delay of 12 days in refiling the appeal is condoned.

RSA No. 536 of 2014

The plaintiff-appellant (hereinafter referred to as 'the plaintiff') has come up in this regular second appeal against the judgment dated 26.2.2011 passed by the Civil Judge (Junior Division) Ambala City, whereby the suit of the plaintiff was dismissed and the judgment dated 12.7.2013 passed by the Additional District Judge, Ambala whereby the appeal against the judgment of the trial Court

was dismissed.

Plaintiff had filed a suit against the order passed by the respondents-defendants (hereinafter referred to as 'the defendants') whereby he was reverted from the post of driver goods.

The plaintiff joined the railway department as Cleaner on 2.8.1977 and was promoted to the post of Fireman Grade C on 9.3.1980; fireman grade B on 16.3.1985; Fireman grade A on 9.8.1986; Diesel Assistant on 9.1.1991 and Shunter on 15.3.1998 and the said promotion were on the basis of his eligibility, qualification and fitness. In the year 2000, defendants no. 1 & 2 issued a notice for filling the posts of driver goods and written test was held in which the plaintiff appeared and was declared pass and the name of the plaintiff appeared at serial no.8. Thereafter, defendant no. 1 & 2 directed the plaintiff to appear for viva voce and psycho test and the name of the plaintiff appeared at sr. no. 94 and was declared suitable in the psycho test. There were seven persons in the name of Ashok Kumar who appeared in the psycho test and plaintiff was shown to be successful at sr. no.1. The result of viva voce was also declared on 4.10.2000 and name of the plaintiff appeared at sr. no.7. Further, in the said result of viva voce, name of Ashok Kumar s/o Sat Narayan was not mentioned and name of Ashok s/o Sat Narayan was mentioned at S. No. 35 of psycho test remarks of 'not suitable'. After passing three tests, plaintiff became qualified and eligible for promotion for driver goods vide letter dated 24.10.2000 and was sent for training at various stations and for

special medical examination on 1.11.2000 and was issued A-1 certificate by DMO, Amabala. He was also issued a spare letter by defendant no.2 and was sent from Bhatinda to Ambala and Pass No. 034672 dated 2.11.2000 was also issued for travelling from Bhatinda to Ambala. Thereafter, the plaintiff was given a performa for learning and he got 2000 mileage and also worked at Ambala for 2½ months and thereafter was sent to A.M.E (OP) UMB on 8.12.2000 for practical test.

Subsequently, the plaintiff came to know that he had been declared fail in psycho test. He was de-paneled by defendant no.2 vide letter dated 11.1.2001 to give undue benefit to Ashok Kumar s/o Sat Narayan. The plaintiff sent representation about this de-panelment to defendant no.2 on 5.7.2001 and after considering the representation of the plaintiff, the reversion order from the post of driver goods to shunter was cancelled and plaintiff was again restored on the same post of driver goods. Thereafter a show cause notice was given to the plaintiff by defendant no.2 vide letter dated 8.5.2002 and reply was given by the plaintiff on 17.5.20002 but the reply was not considered by the defendants. The plaintiff, thereafter filed an OA No. 546/PB/2002 in the Central Administrative Tribunal, Chandigarh. Central Administrative Tribunal, Chandigarh upheld the order of reversion of the plaintiff vide 20.8.2003. Thereafter the plaintiff filed a review petition for reviewing the order dated 20.8.2003 which was also dismissed on 26.9.2003.

Thereafter, the plaintiff filed the present suit in which the

defendants took the objection regarding res judicata and maintainability. It was stated that the plaintiff did not pass the psycho test but inadvertently, he was promoted due to bona fide mistake in place of Ashok Kumar s/o Sat Narayan and when it came to the knowledge, the name of the plaintiff was deleted and that of Ashok Kumar s/o Sat Narayan was incorporated. The suit of the plaintiff was dismissed as the Central administrative Tribunal had adjudicated the controversy in detail and it was held against the plaintiff.

The lower appellate Court on appeal has examined the evidence in detail. It is apparent that finger print expert has not been examined. The original documents Ex P-10 and Ex. P-11 could not be produced before the Court which could be compared with the other documents to prove the fact of forgery and fabrication. The original record was produced before the Court of Special Railway Magistrate, Ambala in a complaint case filed by the plaintiff meaning thereby the original record lied in a complaint pending before the Special Railway Magistrate, Ambala. The lower appellate Court has further observed that the Central Administrative Tribunal, Chandigarh had examined the original record of selection of the plaintiff and no irregularity was found therein. In cross-examination, the plaintiff had admitted that all the factum regarding decision of the petition by the Central Administrative Tribunal, Chandigarh. He also admitted that the service record was also summoned there for verification but he did not move any application with regard to the forged and fabricated documents. He also admitted this fact that he heard about the

factum of forged and fabricated documents by the respondents.

Lower appellate Court held that there was no cogent evidence on record to substantiate the version of the plaintiff that said documents P-10 and P-11 were forged and fabricated and dismissed the appeal.

After going through the judgments passed by both the Courts, I do not find any infirmity or illegality in them. They do not require any interference on account of perverse findings of facts. No substantial question of law arises for consideration in this regular second appeal. Hence the same is dismissed.

July 14, 2015
ritu

(**RITU BAHRI**)
JUDGE