

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

**Regular Second Appeal No.5880 of 2014 (O&M)
Date of decision : 23.04.2015**

The State of Punjab & others

...Appellants

versus

Jasbir Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vaibhav Sharma, DAG, Punjab for the appellants.

Mr. S.K.Arora, Advocate for the respondent.

RITU BAHRI, J (Oral)

CM-13992-C-2014

There is a delay of 121 days in filing the appeal.

For the reasons mentioned in the application, the same is
allowed and the delay of 121 days in filing the appeal is condoned.

CM stands disposed of.

RSA-5880-2014

State of Punjab has come up in regular second appeal
against the judgment of the lower appellate Court dated 26.04.2014
whereby the suit of the plaintiff Jasbir Singh has been decreed and the
plaintiff was held entitled to promotion of Senior Assistant with effect
from 20.09.1988.

The plaintiff joined as Steno-Typist in the Department on

20.12.1979. His services were regularised on 26.10.1982 and he stood in seniority list at Sr.No.47, vide order dated 27.07.2001. He qualified the Assistant Grade Examination on 26.06.1988. One Upkar Singh, Steno-Typist, who was appointed on 18.04.1980 was regularised on 26.10.1982. He qualified the Assistant Grade Examination on 20.09.1988 and his seniority number was 54, which was below that of the plaintiff. Upkar Singh preferred a civil suit which was decreed and he was promoted, vide order dated 01.08.2005, with effect from 20.09.1988 i.e. the date of qualifying examination by him. The plaintiff filed the present suit on 10.03.2006 claiming the promotion being senior to Upkar Singh. The trial Court dismissed the suit, however, the lower appellate Court allowed the appeal. The sole evidence of the defendant DW1 Satish Kumar had admitted that as per the seniority list the plaintiff stood at Sr.No.47 and Upkar Singh stood at Sr.No.54. They both belonged to the same cadre and services were regularised on 26.10.1982. He further admitted that pursuant to a decree in favour of Upkar Singh, he was promoted as Senior Assistant with effect from the date he had passed the Assistant Grade Examination. The department had accepted decision to promote Upkar Singh and granted him service benefits, arrears of pay and allowances. The plaintiff had also qualified to be promoted as Senior Assistant as he had passed his Assistant Grade Examination on 26.06.1988 by securing 160 marks and his service record was good. The objection of the department that in earlier litigation in civil suit No.28-1 dated

27.10.1990, the judgment and decree in civil suit was held to be a nullity could not be a ground to reject the claim of the promotion of the plaintiff when his junior Upkar Singh was promoted on 01.08.2005, vide order Ex.D1. The lower appellate Court set aside the finding of the trial Court as incorrect to reject the claim of the plaintiff under provisions of Order 7 Rule 1(J) of the Civil Procedure Code has erroneous. In his deposition DW1 had deposed that as per the official record the plaintiff was entitled for promotion as Senior Assistant with effect from 20.09.1988 at par with Upkar Singh from the date of completing the Assistant Grade Examination. The lower appellate Court decreed the suit of the plaintiff and held him entitled to the promotion to the post of Senior Assistant with effect from 20.09.1988 along with all consequential service benefits of fixation, grant and release of pay and allowances and its arrears along with interest @ 9% per annum from the date 20.09.1988. The lower appellate Court has decreed the suit of the plaintiff as Upkar Singh who was junior to the plaintiff had been given promotion with effect from the date 20.09.1988 when he passed the Assistant Grade Examinationn, in a civil suit which attained finality in 2005. The judgment has been passed on finding of fact and no substantial question of law has arisen for adjudication.

Dismissed.

23.04.2015
Vinay

(RITU BAHRI)
JUDGE