

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

(201)

RSA No. 3232 of 1987

Date of Decision: 04.11.2016

Punjab State Electricity Board, Patiala

.....Appellant(s)

Versus

Onkar Singh Patial

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Balbir Singh Wasu, Advocate
for the appellant.

None for the respondent.

P.B. BAJANTHRI, J. (Oral)

Matter called twice. None appears on behalf of the respondent. It is to be noted that while deciding the review application, also none appears on behalf of the respondent. Matter pertains to the year of 1987. Therefore, the matter is heard.

In the present appeal, the appellant has questioned the validity of the appellate court order dated 15.4.1987 passed in Civil Appeal No.190 of 1985.

The respondent was promoted to the post of Assistant Engineer Grade-II from the post of Line Superintendent on 21.7.1976 and he has reported on 27.7.1976. In the meanwhile, the appellant promoted direct recruitment to the post of Apprentice Engineer in the

month of January 1976 and they were sent for training for a period of six months which was ended in the month of July 1976.

Having regard to the service particulars of the promotees and direct recruitees, the direct recruitments were placed over and above promotee while preparing seniority list and notifying the same on 30.9.1982. The respondent-promotee aggrieved by the ranking assigned to him filed a suit before the trial court. The trial court dismissed the suit on 16.5.1985. Thereafter, the respondent preferred an appeal before the appellate court. On 15.4.1987, the appellate court decreed the suit while holding that respondent promotee would be senior to the direct recruitee. The appellant feeling aggrieved by the order of the appellate court dated 15.4.1987, presented this appeal.

None appears for the respondents despite giving sufficient opportunities.

Learned counsel for the appellant submitted that object behind placing direct recruitees over and above promotees is with reference to Regulation 15(1) and proviso (b) of Punjab State Electricity Board Service of Engineers (Electrical), Regulations, 1965. Regulation 15(1) and proviso (b) reads as follows:

“15. The seniority of the members of the Service shall be determined as follows:

(1) PRIOR TO CONFIRMATION: The seniority inter se of members of the Service in a particular class of post viz, Assistant Engineers Class II, Assistant Executive Engineers, Executive Engineers Superintending

Engineers and Chief Engineers shall be determined by the dates of their continuous appointments in that class.

Provided, firstly, that in the case of members appointed by direct appointment, the order of merit determined by the Board shall not be disturbed so far as the seniority in the class of post to which direct appointment was made is concerned, and persons appointed as a result of an earlier selection shall be senior to those appointed as a result of subsequent selection.

Provided, secondly, that in the case of two or more members appointed on the same date, seniority shall be determined as follows:

x x x

x x x

x x x

(b) In the case of members of the service appointed as Assistant Engineers Class II and above by promotion according to their relative seniority in the lower class from which they were promoted unless a member of a lower class is promoted earlier than another member of that class who is senior to him and the latter has been passed over on the score of unsuitability or ineligibility for promotion in which case the member of the lower class first promoted shall take rank in the higher class above such other member of the lower class, if and when the latter is promoted as Assistant Engineer Class II and or above.

Provided, thirdly, that a member of the Service who is appointed as Asstt. Engineer Class II by direct appointment shall be senior to all members of the Service appointed as Asstt. Engineer Class II by promotion from the subordinate class who may be appointed in the Service after the appointment of any member by direct appointment in the same batch of selection.”

The respondent has questioned the seniority assigned to him in the seniority list dated 30.9.1982. The above provision specifically provides that direct recruits should be placed over and above promotees and he has not challenged the validity of the above regulation. In the absence of challenge to regulation, there is no infirmity in the seniority list dated 30.9.1982 by which the respondent has been placed below the direct recruits. Having regard to the above regulation, the Appellate Court has failed to appreciate service particulars of the direct recruits and the respondent read with regulation 15(1) and proviso (b) that direct recruits would be placed over and above promotees. Thus, the appellate court has erred in holding that seniority list is illegal. Accordingly, the appellate court order dated 15.4.1987 is set aside.

The appeal stands allowed.

(P.B. BAJANTHRI)
JUDGE

04.11.2016
sahil soni

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No