

RSA No. 5603 of 2003 (O&M)

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

**RSA No. 5603 of 2003 (O&M)
Date of Decision : 12.07.2016**

Madan Mohan

...Appellant

Versus

Haryana State Electricity Board and others

...Respondents

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

- 1) *Whether Reporters of the local papers 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?*

Present: Appellant in person.

Mr. R.K.S. Brar, Advocate for respondent-HSEB.

Mr. Jagat Narain, Advocate for respondent No. 4.

P.B. Bajanthri, J.(Oral)

CM No. 7919-C of 2015

For the reasons mentioned in the application, which is duly supported by an affidavit, application for fixing of actual date of hearing in RSA No. 5603 of 2003 is allowed.

With the consent of learned counsel for the parties, RSA No. 5603 of 2003 is taken up today for hearing.

Main Case

In the instant regular second appeal, the appellant has questioned the validity of judgment and decree dated 28.09.1994 passed by learned Sub Judge Ist Class, Chandigarh and judgment and decree dated 26.04.2003 passed by learned Additional District Judge, Chandigarh.

Brief facts of the case are that appellant is stated to have been appointed as an Assistant in the office of Haryana State Electricity Board (for short 'Board'). On 19.08.1971 he was allowed to discharge the duties of the post of Legal Assistant. The post of Legal Assistant was re-designated as an Assistant Law Officer with reference to Regulation in the year 1972 governing various posts including Assistant Law Officers and Law Officers. Thus, the appellant was in the cadre of Assistant Law Officer.

On 08.04.1983 Board notified final seniority list of Assistant Law Officers as well as Law Officers. Contesting respondents feeling aggrieved by the final seniority list of Assistant Law Officers as well as Law Officers, filed a suit for declaration. Relevant extract of suit for declaration prayed by the contesting respondent-Sh. Jaspal Singh (Suit No. 228 of 26.08.1983) is reproduced herein:-

“Suit for declaration to the effect that the:

- (i) Final seniority list of Assistant Law Officers as on 30.12.1976 issued vide defendant No. 1 memo No. CH.94/EG-468 dated 8.4.1983.*
- (ii) final seniority list of Law Officers as stood on 30.06.1982 issued by the defendant No. 1 through Secretary, HSEB office order No. 118/EG-468 dated*

8.4.1983,

are wrong, illegal, arbitrary, malafide against facts and the service rules are void and, therefore, not binding and operative on the rights of the plaintiff and that the plaintiff is entitled to be placed at Sr. No. 1 in the two seniority lists.”

Trial Court framed issues. Main issue is, “*whether the impugned seniority list issued on 8.4.1983 are wrong, illegal, arbitrary, malafide and against the service rules, if so to what effect? OPP.*”

Trial Court even though upheld the seniority list of Assistant Law Officers and Law Officers, however, an observation has been made that the appellant and defendants No. 3 and 4, namely, Jagat Narain and Balkrishan (contesting respondents herein) were not appointed by the Chairman of the Board, therefore, their appointment itself is illegal and it was further observed that the appellant and others do not fulfill the qualification prescribed for the post of Assistant Law Officer. Feeling aggrieved by the observation/finding of the trial Court that the appellant and contesting respondents are ineligible to hold the post of Assistant Law Officers on the ground that some of the contesting respondents were not appointed by the competent authority or Chairman or for lack of the qualification prescribed for the Assistant Law Officers, appellant and others including the plaintiff preferred an appeal before the appellate Court. Appellate Court affirmed the decree passed in suit by the trial Court. Thus, the appellant is before this Court presenting the regular second appeal.

The appellant in person submitted that issue before the trial

Court is whether the final seniority list of Assistant Law Officers and Law Officers dated 08.04.1983 is valid or not? The trial Court while upholding the final seniority list of both the cadres made an observation that appellant and others are ineligible to hold the post of Assistant Law Officer. Trial Court as well as appellate Court travelled beyond the scope of a suit and held that appellant and other contesting respondents are ineligible to hold the post of Assistant Law Officer for one or the other reason. The appellant submitted that in the absence of challenge to their appointment or re-designation to the post of Assistant Law Officer from Legal Assistant, which was not the subject matter before any Court of law or the Board had withdrawn the re-designation order as an Assistant Law Officer from Legal Assistant, therefore, a decision by the trial Court to hold that appellant and other contesting respondents are ineligible to hold the post of Assistant Law Officer is without basis. In fact, Board has supported the publication of final seniority list of Assistant Law Officers and Law Officers before the trial Court as well as appellate Court. Therefore, observation or finding given by the trial Court that the appellant and other contesting respondents in the suit are ineligible without authority of law and without jurisdiction. It was noticed that holding the post of Assistant Law Officer by the appellant from 1973 till filing of the suit in the year 1983, none has questioned and the Board has not withdrawn holding post of Assistant Law Officer by the appellant and contesting respondents. Rightly or wrongly the contesting respondents have discharged the duties of the post of Assistant Law Officers and they have attained the age of superannuation in the year

1991, therefore, in order to give quietus to the matter, the appeal is allowed in part to the extent that observation/finding of the trial Court that the appellant and other contesting respondents in a suit are ineligible to the post of Assistant Law Officer is set-aside and also affirmation of trial Court observation or finding by the appellate Court is set-aside.

Appeal stands disposed of in above terms.

July 12, 2016.
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(P.B. BAJANTHRI)
JUDGE