

RSA-3891-2010 (O&M)

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In the High Court of Punjab and Haryana at Chandigarh.

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Date of Decision:20.01.2016

Rattan Chand

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. R.K. Arya, Advocate,
for the appellant.

Mr. K.D.S. Sidhu, Addl. AG, Punjab.

SABINA, J.

Appellant had filed suit for mandatory injunction directing the respondents No.1 to 5 to release the arrears of pay, leave encashment, gratuity, pension and other pensionary benefits by stepping up his pay w.e.f. 01.01.1996 to 30.04.1997.

Case of the appellant, in brief, was that he was appointed as a Clerk on 08.06.1990. Appellant was promoted as Senior Assistant on 08.12.1994 and retired from service on 30.06.1998. Kewal Krishan Sharma was also appointed as a Clerk on 20.06.1963 and retired as Senior Assistant on 31.05.2000. Although, Kewal Krishan Sharma was junior to

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the appellant but appellant was paid less salary than his junior.

Defendants in their written statement had averred that Kewal Krishan Sharma was junior to the appellant and had been wrongly been granted the benefit of Assured Career Progression ('ACP' for short) Scheme. Hence, the benefit granted to Kewal Krishan Sharma could not be granted to the appellant.

On the basis of the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for? OPP
2. Whether the suit filed by the plaintiff is not maintainable? OPD
3. Relief.

Parties led their evidence in support of their respective pleas.

Trial Court vide judgment/decreed dated 19.10.2005 dismissed the suit of the appellant. The said judgment/decreed were upheld by the First Appellate Court in an appeal filed by the appellant vide judgment/decreed dated 24.11.2009. Hence, the present appeal by the appellant-plaintiff.

I have heard learned counsel for the appellant and the learned State Counsel and have gone through the record

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available on the file carefully.

In the present case, the appellant had claimed arrears of pay on account of the fact that his junior Kewal Krishan Sharma was drawing higher pay than him. The case of the respondents was that Kewal Krishan Sharma had been wrongly granted the benefit of proficiency step-up and in this regard the matter has been taken up with the higher authorities.

During the pendency of this appeal, following order was passed by this Court on 01.08.2014:-

“Learned counsel for the appellant submits that additional affidavit dated 13.7.2012 filed by District Education Officer (SE), Gurdaspur, pertains to only one junior of the appellant namely Kewal Krishan. He further submits that there were as many as 17 juniors of the appellant who were getting the higher pay scale after having granted the benefit of proficiency step up.

Learned counsel for the State seeks time to get instructions.

On her request, adjourned to 25.09.2014.”

In pursuance to the said order, respondents have placed on record the affidavit of District Education Officer dated 09.10.2015. A perusal of the said affidavit reveals that

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the cases of all the 17 alleged juniors were processed and it was found that two juniors namely Desh Raj and Madan Lal had been rightly granted the benefit of ACP whereas 15 alleged juniors had been wrongly granted benefit of ACP and due to this reason they had drawn higher pay than the appellant. The benefit of ACP wrongly granted to the said 15 official would be withdrawn and the matter in this regard had been taken up with the competent authority.

In the facts and circumstances of the present case, the Courts below had, thus, rightly dismissed the suit of the plaintiff as junior to the appellant had been wrongly granted the benefit of ACP and the Department was taking steps to rectify the mistake.

Thus, no substantial question of law arises in this case, warranting interference by this Court.

Dismissed.

January 20, 2016
kapil

(SABINA)
JUDGE