

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

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**RSA No. 4052 of 2011 (O&M)
Date of decision: 13.12.2016**

G.S.Guleria

....Appellant

Versus

Indian Red Cross Society

.... Respondent

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. A.K.Jain, Advocate for the appellant.

Mr. K.K.Gupta, Advocate for the respondent.

P.B. Bajanthri, J. (Oral)

In the instant appeal, the appellant has questioned the orders of the trial court and appellate court dated 22.01.2010 and 07.06.2011 respectively.

2. The appellant was appointed as a Clerk and further promoted to the post of Senior Clerk. While working as Senior Clerk, he was directly appointed to the post of Deputy Secretary on 19.03.1996 in his own pay scale of Rs. 1200-2100. In other words, even though he was discharging the duties of the post of Deputy Secretary he was drawing the pay attached to the post of Senior Clerk. The respondent noticed certain irregularities in appointing the appellant as a Deputy Secretary. Consequently, show cause

notice was issued on 06.03.1997 for which the appellant has submitted his reply on 12.03.1997. After considering the reply, the respondent proceeded to pass the order on 17.03.1997 while reverting the appellant to the post of Senior Clerk carrying the same pay scale of Rs. 1200-2100 within a period of one year from the date of appointing him as Deputy Secretary. Later on, the respondent proceeded to abolish the post of Deputy Secretary on 20.03.1997. Thus, appellant feeling aggrieved by the order dated 17.03.1997 and 20.03.1997 filed a suit for declaration before the trial court. During pendency of the suit, he made necessary amendment to the suit to challenge the abolition of post of Deputy Secretary on 20.03.1997. Suit was rejected on 22.01.2010. Consequently, he preferred an appeal before the appellate court. The appellate court also rejected the appellant's appeal on 07.06.2011. Thus, the present appeal has been filed.

3. Learned counsel for the appellant submitted that rightly or wrongly, the appellant has been appointed to the post of Deputy Secretary. It was submitted that post of Deputy Secretary is not promotional post from the post of Senior Clerk. Therefore, he has been directly appointed to the post of Deputy Secretary and the order of appointing him as a Deputy Secretary has not been cancelled. Therefore, the action of the respondent in reverting the appellant from the post of Deputy Secretary to that of Senior Clerk on 17.03.1997 read with abolition of the post of Deputy Secretary on 20.03.1997 are illegal and arbitrary. Both the courts have not appreciated the fact of not cancelling the appointment of the appellant as a Deputy Secretary. Therefore, orders passed by the trial court and the appellate court

are liable to be set aside.

4. On the other hand, learned counsel for the respondent submitted that on 17.03.1997 the appellant had been reverted to the post of Senior Clerk from the post of Deputy Secretary. Before appointing the appellant as Deputy Secretary, the appellant has not resigned the post of Senior Clerk so as to contend appointment of the appellant as a Deputy Secretary has not been cancelled and he has been reverted to the post of Senior Clerk. Therefore, there is no infirmity in the order dated 17.03.1997. Further abolition of the post on 20.03.1997 is also in accordance with law. From 20.03.1997 till date, the post of Deputy Secretary has not been revived. It was further contended that since concurrent findings has been given by the trial and the appellate court, no interference is called for.

5. Heard learned counsel for the parties.

6. Perusal of the order dated 17.03.1997 reverting the appellant to the post of Senior Clerk would deemed to be cancellation of appointing him as a Deputy Secretary for the reasons that while appointing appellant as a Deputy Secretary he has not resigned the post of Senior Clerk. That apart, Senior Clerk is not a source cadre to the post of Deputy Secretary and having regard to the fact that appellant was appointed directly to the post of Deputy Secretary without resorting to the advertisement and other process of recruitment, the respondent had rightly taken a decision to put the appellant back to the post of Senior Clerk and there is no infirmity in the order dated 17.03.1997 so also the order dated 20.03.1997 by which the post of Deputy Secretary has been abolished. Both the courts below have rightly

refused to interfere with the orders dated 17.03.1997 and 20.03.1997.

7. Appellant has not made out a case so as to interfere with the order of the trial court.

8. Appeal stands rejected.

13.12.2016

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No