

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

RSA No.2952 of 2012

Date of Decision:10.11.2016

Prem Chand

... Appellant

Vs.

The Patiala Central Cooperative Bank Limited and another... Respondents

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

Present : Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Amandeep Singh, Advocate for the appellant.

Mr. N.S. Vashist, Advocate for respondent No.1.

Mr. Jatinder Singh, Advocate for respondent No.2.

P.B. BAJANTHRI J.

In the instant appeal, the appellants have questioned the validity of the trial and appellate court orders dated 1.5.2010 and 5.4.2012 respectively.

The appellant joined the service on 1.10.1970. He has attained the age of superannuation and retired from service on 31.3.2004. While he was in service, he was charge-sheeted for certain allegations when he was working as a Assistant Manager on 10.8.1998. Simultaneously, arbitration proceedings were going on against the appellant. During pendency of both the proceedings, promotion to the post of Manager was considered on 5.5.2001. Due to the pendency of the disciplinary proceedings as well as arbitration proceedings, the appellant's claim for promotion was deferred. The disciplinary proceedings were concluded in imposing the penalty of reversion from the post of Assistant Manager to that of Accountant. The appellant aggrieved by the order of penalty preferred an appeal before the appellate authority and the appellate authority on 8.8.2004 allowed the

appeal i.e. after retirement of the appellant. Extract of the order passed in appeal reads as under:

“Keeping in view of the above the punishment of reversion of the petitioner from Assistant Manger to Accountant is on higher side and which was also awarded just before his retirement. I therefore, set aside the order dated 7.2.2004 and bank authority is at liberty to impose another lesser punishment to the petitioner.”

Pursuant to the order passed by the appellate authority, Disciplinary Authority has not passed any order insofar as imposition of any other lesser punishment other than the reversion of the appellant from the post of Assistant Manger to that of Accountant till date. Thus, the appellant filed a suit for declaration before the trial court seeking retrospective promotion to the cadre of Manager from the date of junior's promotion and to extend monetary benefits for the period from 7.3.2001 to 31.3.2004.

Both the courts have held that the appellant is not entitled for the relief sought by him on the ground that as on the date of junior's promotion, the appellant was facing disciplinary proceedings. Courts below have considered that the appellant was facing disciplinary proceedings as on the date of juniors to the appellant were promoted, therefore, he is not entitled for the relief sought by him. Hence, the present appeal has been presented.

Learned senior counsel for the appellant submitted that the respondents have ignored the name of the appellant for promotion to the cadre of Manager on the sole ground that the appellant was facing disciplinary proceedings. Since the disciplinary proceedings have been concluded in imposing the penalty and the said penalty has been set aside by the appellate authority, the disciplinary authority should have exercised the

liberty given by the appellate authority to impose any other penalty other

than the reversion from the post of Assistant Manager to that of Accountant. In the meanwhile, the appellant has retired on 31.3.2004. Therefore, the disciplinary authority/appellate authority should have re-considered name of the appellant for promotion and consequential benefits. Such in action is arbitrary.

On the other hand, learned counsel for the respondent-bank submitted that even though the respondent-bank have not passed any consequential order pursuant to the appellate authority order dated 8.8.2004 imposing any other penalty other than the reversion but still the appellant is not entitled to be promoted to the post of Manager on par with his juniors on the ground that the appellant was facing arbitration proceedings which has been upheld while rejecting the writ petition. Therefore, the appellant is not entitled for the promotion to the post of Manager.

Heard learned counsel for the parties.

Short question for consideration in the present appeal is whether the appellant is entitled for promotion to the cadre of Manager with effect from 5.5.2001 the date on which his immediate juniors were promoted to the post of Manager or not?

Admittedly, the appellant was facing disciplinary proceedings as on 5.5.2001 and it was concluded in imposing the penalty of reversion from the post of Assistant Manager to that of Accountant and the said penalty was set aside by the appellate authority on 8.8.2004 while reserving liberty to the disciplinary authority to impose any other penalty other than the reversion. Since the disciplinary authority did not comply the direction of the appellate authority in imposing the minor penalty, the appellate authority order has attained finality insofar as imposition of penalty of

reversion from the post of Assistant Manager to that of Accountant i.e. awarding of penalty. Consequently, the appellant should have been promoted as on 5.5.2001, the date on which the appellant's juniors were promoted whereas arbitration proceedings were pending consideration. For the purpose of ignoring claim of an employee for promotion what is required to be examined is whether is he facing disciplinary proceedings and not the arbitration proceedings. Therefore, the arbitration proceedings would not come in the way to grant promotion to the appellant. Thus, the trial court as well as appellate court failed to appreciate the in action of the disciplinary authority pursuant to the appellate authority order namely the appellate authority has set aside the order of penalty while giving liberty to the disciplinary authority to impose any other lesser punishment other than reversion. The disciplinary authority has not exercised the power to impose lesser penalty or complied the order passed by the appellate authority. Therefore, the appellant is entitled to be promoted to the post of Manager from the date of his juniors' promotion with all consequential benefits including monetary benefits.

Accordingly, the orders passed by the trial court as well as appellate court are set aside.

The appeal is allowed. The respondent-Bank is directed to promote the appellant to the post of Manager from the date of his juniors' promotion and further grant all consequential and monetary benefits for the intervening period from the date his juniors were promoted till his retirement. The consequential and monetary benefits be disbursed to the appellant within a period of four months from today. It is made clear that the appellant is not entitled to interest on arrears of pay etc., having regard to

the facts of the case.

10.11.2016

rajeev

(P.B. Bajanthri)

Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No