

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1351 of 2013 (O&M)
Date of Decision:- 28.09.2016.

Rohtas

.....Appellant

Versus

Haryana State Agricultural Marketing Board

.....Respondent

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

Present: Mr. Naveen Daryal, Advocate for the appellant.

Mr. Parveen Chauhan, Advocate for
Mr. Gagandeep Wasu, Advocate for the respondent.

P.B. BAJANTHRI, J. (Oral)

- 1.) In the instant appeal, the appellant has questioned the validity of the Appellate Court order dated 23.11.2012.
- 2.) The appellant was appointed as Chowkidar on 1.1.1993. His claim for promotion to the post of Driver with reference to Chief Secretary to Government of Haryana's instructions vide No.25/18/2005-4-GSII dated 13.9.2005 was not considered. However, junior to the appellant, namely, one Balwant Kumar who was Peon was promoted to the post of Driver from the Class-IV post of the Haryana State Agricultural Marketing Board. Trial Court decreed the suit in favour of the appellant on 26.7.2011. The respondent-Board aggrieved by the Trial Court preferred an appeal before the Appellate Court. The Appellate Court reversed, the order of the Trial Court on 23.11.2012. Thus, the appellant presented this appeal.

3.) Learned counsel for the appellant submitted that prior to 15.1.2008 for the purpose of promotion to the post of Driver, there were no Recruitment Rules. The respondent-Board was considering five years of experience in the lower cadre-Class-IV. On 29.5.2006, one Sh. Balwant Singh, Peon was promoted to the post of Driver ignoring the claim of the appellant who is stated to be senior to Sh. Balwant Singh. Thus, the respondent-Board have ignored the claim of the appellant. Consequently, appellant is entitled to be promoted to the post of Driver from the date Balwant Singh was promoted i.e. on 29.5.2006. Therefore, the Appellate Court has erred in holding that appellant is not entitled for promotion.

4.) On the other hand, learned counsel for the respondent-Board submitted that no doubt appellant is senior to Balwant Singh, however, on 11.1.2008 amongst others Sh. Balwant Singh's promotion/assigning duties of car/jeep driver entrusted to the Class-IV of the Haryana State Agricultural Marketing Board has been withdrawn by the Market Committee. In view of the withdrawal of the promotion/assigning duties of the post of Driver to Sh. Balwant Singh, the appellant has no case for consideration of his name for promotion to the post of Driver from the date Sh. Balwant Singh, Peon was promoted on 29.5.2006.

5.) Heard learned counsel for the parties.

6.) Perusal of the records, it is admitted that appellant is senior to Sh. Balwant Singh. The respondent-Board have committed error in not considering the name of the appellant for promotion to the post of Driver as and when Sh. Balwant Singh was junior to the appellant promoted on 29.5.2006. In view of withdrawal of promotion/assigning duties of the post of Driver to Sh. Balwant Singh on 11.1.2008, the present appeal has become

infructuous. However, the appellant was before the Trial Court and Appellate Court since 2006. Therefore, the respondent-Board are liable to pay the financial benefits to the appellant on par with Sh. Balwant Singh for the period from 29.5.2006 to 11.1.2008 along with interest @ 9% per annum. The respondent-Board are directed to publish seniority list of combined Class-IV employees prior to 15.1.2008 the date of issuance of Rules of recruitment viz., the Haryana State Agricultural Market Board Service Rules, 2008 and consider the name of the appellant for promotion to the post of Driver for the vacancies occurred prior to C & R Rules, 2008, since it is evident from the withdrawal of promotional assigning duties of Driver to Class-IV employee that 14 vacancies were available. Supreme Court in the case of **Y.V. Rangaiah and others Vs. J. Sreenivasa Rao and others (1983) 3 SCC 284** held as under:-

“9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Register Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than the respondents Nos. 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no

question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.”

Therefore, the respondents are directed to fill up those 14 vacancies of Driver which were occurred prior to 2008 Rules were issued in accordance with old rules/instructions only. However, such of those 14 vacancies of Driver are required to be filled up in accordance with the then instructions/Executive orders/rules, if any, prior to 2008 Rules. The above exercise shall be completed by the respondents within six months from today.

7.) Appeal stands disposed of.

(P.B. BAJANTHRI)
JUDGE

September 28, 2016.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.