

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

RSA No. 154 of 2013 (O&M)

Date of decision: 28.09.2016

Haryana Urban Development Authority and others

....Appellants

Versus

Raghubir Singh

....Respondent

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

Present: Mr. Ajay Kumar Kansal, Advocate,
for the appellants.

Mr. Munish Kumar Garg, Advocate,
for the respondent.

P.B. BAJANTHRI, J. (Oral)

In the instant appeal the appellants have questioned the validity of appellate Court order dated 07.08.2012.

The respondent-Raghubir Singh was appointed as Chowkidar on daily wages basis on 01.10.1985. His services were regularized w.e.f. 03.08.1993. He was transferred from Bahadurgarh to Jind on 27.08.1998. He was assigned the work of Electrical Helper. While he was discharging the work of Electrical Helper his name was inserted in the seniority list of Electrical Helper. The respondent is stated to have requested for his change of cadre from Chowkidar to that of Electrical Helper on 23.10.1998. The same was forwarded by the Sub-Divisional Engineer and it was considered by the Executive Engineer on 29.10.1998. It is undisputed that the respondent was working as Electrical Helper as on 25.05.2000, the date on which the respondent's immediate junior in the cadre of

Chowkidar was promoted. In the meanwhile on 25.01.2000 name of the respondent was reflected in the seniority list of Electrical Helper at Sr. No. 1. In this background the respondent filed writ petition before this Court questioning the seniority list of Electrical Helper as well as promotion of one Raj Kumar to the post of Water Pump Operator in the year 2004. Later on, he withdrew the said writ petition, with liberty to approach the civil Court. In the meanwhile on 27.05.2005, the appellants have issued an order stating that the respondent is not entitled to come back as Chowkidar and seek promotion to the post of Water Pump Operator on par with others. Feeling aggrieved by the order dated 27.05.2005 the respondent filed suit for declaration before the Trial Court. On 27.01.2010 the trial Court rejected the suit. Thus, the respondent preferred an appeal before the appellate Court. The appellate Court allowed the appeal on 07.08.2012 holding that the respondent has not been transferred to the post of Electrical Helper from Chowkidar on permanent basis, therefore his lien would be continued in the post of Chowkidar. To that effect the service book has not been altered thus, claim of the respondent is that he had lien over the post of Chowkidar. The appellants aggrieved by the order of the appellate Court presented this appeal.

The learned counsel for the appellants submitted that the respondent while working as Chowkidar requested for posting him as Electrical Helper from the post of Chowkidar on 23.10.1998. The same was forwarded by the Executive Engineer. The executive Engineer posted the respondent as Electrical Helper on 29.10.1998

thus, the respondent's cadre was changed from Chowkidar to Electrical Helper. Consequently, in the seniority list name of the respondent has been shown at Sr. No. 1 prepared on 25.01.2000. On 25.05.2000, Raj Kumar who is immediate junior to the respondent was promoted to the post of Water Pump Operator therefore, there is no infirmity in holding that the respondent is in the cadre of Electrical Helper. His case cannot be considered as a Chowkidar as requested by him whereas the appellate Court erred in holding that respondent had lien over the post of Chowkidar in the absence of challenge to change of cadre dated 29.10.1988 read with seniority list of electrical helper dated 25.01.2000.

Per contra learned counsel for the respondent resisted the contentions of the learned counsel for the appellants contending that the respondent never submitted application for change of cadre on 23.10.1998 as contended by the appellants. He is disputing the document dated 23.10.1998. Before the trial Court the document was not proved, therefore, if any change of cadre from Chowkidar to Electrical helper is on record, the same is not at the behest of the respondent. For the purpose of change of cadre from Chowkidar to Electrical Helper consent of the employee/Chowkidar was not obtained. Consequently *suo moto* appellants cannot change the cadre of the respondent from Chowkidar to Electrical Helper. Therefore, there is no error committed by the appellate Court.

Heard learned counsel for the parties.

The contention of learned counsel for the appellants that

the respondent had requested for transfer from Chowkidar to Electrical Helper was not proved. That apart, there is no material to show that the appellants have considered the request of the respondent for change of cadre. Consequently, it is in the interest of respondent, therefore, he is losing the seniority in the cadre of Chowkidar although service conditions have not been stipulated by the appellants so as to say that there is change of cadre from Chowkidar to Electrical Helper. That apart the appellants have not made necessary entry in the service book stating that respondent has taken change of cadre from Chowkidar to Electrical Helper. Therefore, inserting name of the respondent in the cadre of Electrical Helper at Sr. No. 1 on 25.01.2000 is in the absence of necessary entries in the service book. Therefore, the appellate Court has rightly held that there is no change of cadre from Chowkidar to post of Electrical Helper. Consequently the respondent is entitled for the benefit under the post of Chowkidar. In the absence of necessary material relating to change of cadre from Chowkidar to Electrical Helper the respondent had lien over the post of Chowkidar and his service condition would be governed with reference to the post of Chowkidar if the junior were promoted to the next higher cadre of Water Pump Operator on 25.05.2000, the appellants should have considered the name of the respondent. Perusal of the records it is evident that change of cadre formalities has not been completed like taking consent of the respondent, carrying out necessary entries in the service book and imposing condition like seniority in the cadre of

Electrical Helper he would be placed below as on the date of change of cadre etc. Therefore, there is no infirmity in the appellate Court's order.

Appeal stands dismissed.

28.09.2016

PA

(P.B. BAJANTRHI)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No