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

RSA No.5783 of 2015

Date of decision: February 03, 2016

Pushap Raj Goyal

.....Appellant

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. G.S. Bal, Senior Advocate with
Mr. Mohan Singla, Advocate
for the appellant.

SABINA, J

Appellant had filed suit for declaration challenging the order dated 04.04.2005 and for mandatory injunction directing the defendants to promote him as an Assistant w.e.f. 04.09.1987 with all consequential benefits.

The case of the appellant, in brief, was that he had joined the services of the defendants/State as a Clerk on 01.08.1983 at Patiala and later, was transferred to Sangrur. Appellant was promoted as Steno-Typist on 28.07.1987. Appellant appeared for Assistant Grade examination in the year 1987 and cleared the same and appellant was placed at fourth rank in the merit. In the office of defendant No.2, cadre strength of Steno-Typists was 13, whereas, the cadre strength of Clerks was 173.

Thus, the ratio of Clerks and Steno-Typists was 13:1.

However, defendant No.2 had not filled up any post of Assistants from Steno-Typists. Jagdish Rai Steno-Typist, who was working in the office of Sub-Divisional Officer (Civil) Bathinda was promoted as Assistant vide order dated 24.06.1985, although, he had not qualified the Assistant Grade examination, but had qualified the same at a later stage. The said order was challenged by Gopal Krishan and others before the Commissioner, Ferozepur Division, Ferozepur and vide order dated 23.05.1986, the promotion order of Jagdish Rai was set aside. Thereafter, Jagdish Rai filed a review petition before the Financial Commissioner (Revenue), Punjab and the same was allowed vide order dated 03.05.1988. Jagdish Rai was then promoted as Superintendent Grade-II and thereafter, as Superintendent Grade-I. The same Rules were applicable to the Sangrur District. Appellant had approached Financial Commissioner (Revenue), Punjab by moving a representation dated 21.03.1989 with a prayer that Steno-Typists, who had qualified the Assistant Grade examination from the office of defendant No.2 be considered for promotion to the post of Assistant in terms of Rule 9(e) of the Punjab District Service (Class-III) Rules, 1976. Service record of Raghbir Chand Goyal defendant No.4 was not good as he had been inflicted punishment of stoppage of four increments with cumulative effect on account of mis-conduct vide order dated

17.04.1986. Vijay Kumar Syal defendant No.5 was willing to forego his promotion as he had made a written request in this regard on 10.03.1989. Appellant was the senior most Steno-Typist for promotion to the post of Assistant. The representation submitted by the appellant was rejected by the Financial Commissioner (Revenue) Punjab vide order dated 07.02.1990. Thereafter, appellant preferred a review petition but the same was rejected vide order dated 20.12.1990. Deputy Commissioner, Patiala had promoted Gurmail Singh Steno-Typist vide order dated 07.12.1993. Krishan Gopal, Senior Clerk, posted in office of Deputy Commissioner, Punjab filed a civil suit claiming the promotion as an Assistant w.e.f. 24.06.1985 and had challenged the order dated 24.06.1985, whereby, Jagdish Rai was promoted as an Assistant from Steno-Typist, order passed by the Financial Commissioner (Revenue), Punjab dated 16.05.1988, order dated 23.05.1986 passed by Commissioner, Ferozepur Division, Ferozepur and order dated 23.05.1986 passed by Financial Commissioner (Revenue), Punjab rejecting petition of Krishan Gopal. The suit was dismissed vide judgment/decreed dated 04.09.1993. Appeals filed by Krishan Gopal against the said judgment/decreed were dismissed upto this Court. Appellant had filed petition before the Financial Commissioner (Revenue), Punjab on 09.07.2003 for promotion as an

Assistant against vacancy which had arisen on 04.09.1987, but the same was rejected vide order dated 04.04.2005. Hence, the suit was filed by the appellant.

Defendants No.1 to 3 in their written statement averred that the suit filed by the appellant was barred by limitation as the representation moved by the appellant had been dismissed by the Financial Commissioner (Revenue), Punjab vide order dated 07.02.1990. On merits, it was averred that the post of Senior Assistant was filled up by way of promotion amongst Clerks/Steno-Typists on seniority-cum-merit basis as per Punjab District Service (Class-III) Rules, 1976. Since the appellant was much junior, his case could not be considered for promotion as Senior Assistant. Raghbir Chand Goyal was promoted as Senior Assistant w.e.f. 25.01.1992 vide order dated 25.01.1994 and Vijay Kumar Steno-Typist was promoted as Stenographer vide order dated 02.01.1992. Raghbir Chand Goyal had filed writ petition in this Court claiming promotion on the basis of ratio qua Clerks and Steno-Typists and the same was disposed of by this Court vide order dated 29.05.1995 and no relief was granted to him. Appellant had filed CWP No.7050 of 2004 in this Court and the same was disposed of vide order dated 04.05.2004 directing the Financial Commissioner (Revenue), Punjab to dispose of the representation within three months and the same was

rejected vide order dated 27.04.2005.

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

- “1. Whether the order dated 23.04.2005 of defendant No.1 is illegal, null and void, in operative and not binding on the plaintiff and is liable to be set aside?OPP
2. Whether the plaintiff is entitled to declaration and mandatory injunction as prayed for?OPP
3. Whether this Court has jurisdiction to try the present suit?OPP
4. Whether the suit is within time?OPP
5. Whether the plaintiff is estopped by his own act and conduct to file the present suit?OPD
6. Whether the suit is not maintainable?OPD
7. Relief.”

Parties led their evidence in support of their respective pleas.

Trial Court vide judgment/decreed dated 02.07.2013 dismissed the suit of the plaintiff-appellant. The said judgment/decreed were upheld in an appeal filed by the plaintiff-appellant by the First Appellate Court vide judgment/decreed dated 10.03.2015. Hence, the present appeal by the appellant.

I have heard learned counsel for the appellant and have gone through the record available on the file carefully.

In the present case, appellant is claiming promotion to the post of Assistant. The case of the

appellant is that he was working as a Steno-Typist. There were 13 Steno-Typists working in the office of defendant No.2, whereas, there was 173 Clerks working in the office of defendant No.2. Thus, the ratio of Clerks and Steno-Typists was liable to be maintained, so that the Steno-Typists could also get a chance for promotion to the post of Assistant. Admittedly, joint seniority list is maintained of Clerks and Steno-Typists. Post of Assistant is filled up on seniority-cum-merit basis. It is also an admitted case that no person junior to the appellant has been promoted as an Assistant. In these circumstances, the Courts below rightly held that the relief sought by the appellant could not be granted to him.

No substantial question of law arises in this case warranting interference by this Court.

Dismissed.

**(SABINA)
JUDGE**

February 03, 2016
mahavir