

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

**CR No.8132 of 2016(O&M)
Date of Decision-26.09.2017**

Dakshin Haryana Bijli Vitran Nigam Ltd. and another ... Petitioners

Versus

Mohinder Singh Verma

... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.S. Longia, Advocate
for the petitioners.

Mr. Aman Dhir, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 22.08.2016 passed by the Executing Court and the order dated 12.10.2016 passed by the Lower Appellate Court directing the petitioners to grant seniority and consequential promotions to the respondent from the deemed dates when his junior belonging to S.C. category was promoted with all consequential benefits with interest @8% per annum particularly in view of the fact that the orders under execution have been implemented symbolically.

[2]. Respondent/decreed holder was appointed on the post of Upper Divisional Clerk w.e.f 17.01.1969 in the then Haryana State Electricity Board. Respondent belongs to backwards class category. Respondent qualified the Ministerial Departmental Accounts Exam in August 1972 and was confirmed w.e.f. 02.05.1972. He was

promoted to the post of Commercial Assistant and thereafter, on the post of Head Clerk and Circle Superintendent in due course. Respondent was given deemed dates of promotions with effect from the dates on which his juniors were promoted. Ultimately, the respondent retired on 31.03.2004.

[3]. Respondent/decreed holder filed a suit for declaration to the effect that the plaintiff/respondent was entitled to deemed date of promotion from the post of Direct UDC to Commercial Assistant in terms of his Backward Class quota prevailing w.e.f 16.06.1974 as per roster point No.15 meant for B.C. category in the list circulated on 18.06.1995. Consequential relief of promotion on the subsequent posts with all consequential benefits along with interest was also sought.

[4]. Trial Court proceeded to decree the suit of the plaintiff vide judgment and decree dated 12.01.2015. Plaintiff/respondent was held entitled to the fixation of deemed date of promotion from the post of Direct U.D.C to Commercial Assistant considering the plaintiff to be senior to one Santu Lal. Further he was held entitled for the benefit of B.C quota prevailing w.e.f 16.06.1974 with all consequential benefits. The operative part of the judgment dated 12.01.2015 was to the following effect:-

“19. As a sequel to my findings on the fore going issues, suit of the plaintiff is hereby decreed with costs to the effect that he is entitled to fixation of deemed date of promotion from the post of Direct UDC to Commercial Assistant considering him senior

to Santu Lal and further entitled to due benefit of BC quota prevailing at that time w.e.f 16.06.1974 meant for BC amongst the list circulated vide CE/Op., HSEB, Delhi vide memo No.149/SE/BC/Deemed Date 18.06.1995 with all the consequential benefits of above relief granted with direction to the defendants to pay arrears of benefit if any found due with interest @ 8% p.a. Decree sheet be prepared accordingly. File be consigned to record room after due compliance.”

[5]. Against the aforesaid judgment and decree dated 12.01.2015, two cross appeals and one cross objection were filed before the Lower Appellate Court. Plaintiff filed Civil Appeal No.15 of 2015 whereas defendants/petitioners filed Cross Objection No.33 of 2015 and Cross Appeal No.50 of 2015 against the judgment and decree dated 12.01.2015 passed by Civil Judge (Junior Division), Hisar. All the aforesaid appeals and cross objection were consolidated and were decided by the Lower Appellate Court vide judgment and decree dated 22.12.2015. While deciding the aforesaid appeals and cross objection, the Lower Appellate Court has observed that as per seniority list Ex.P6 circulated by Haryana State Electricity Board, names of Mange Ram, Sher Singh and M.L. Darolia belonging to Schedule Caste category were mentioned at serial No.1, 2 and 3 respectively against reserved roster point 3, 8 and 13 respectively for employees belonging to scheduled caste as per reservation policy Ex.P4. The deemed date for promotion were provided in aforesaid Ex.P6 on 18.04.1974, 18.04.1974 and 16.06.1974 respectively. Since roster point No.15 was reserved for

backward class and the plaintiff was the senior most employee who cleared departmental accounts examination in August 1972, therefore, his name was to be considered after the name of M.L. Darolia after serial No.3 in Ex.P6, but his name was not mentioned after the name of M.L. Darolia.

[6]. Perusal of Seniority List Ex.P6 showed the name of Santu Lal at serial No.7 while name of the plaintiff was shown at serial No.32. Lower Appellate Court by referring to aforesaid details observed that Santu Lal was junior to the plaintiff as he had cleared departmental exam after the plaintiff, therefore name of Santu Lal should have been recorded after the name of the plaintiff. Perusal of Seniority List Ex.P6 also revealed that the deemed date of promotion to the post of Commercial Assistant was given to said Santu Lal w.e.f 17.12.1974.

[7]. On the basis of aforesaid, it was observed that the plaintiff was to be given deemed date of promotion to the post of Commercial Assistant w.e.f 17.12.1974 i.e the date on which his immediate junior Santu Lal was given this benefit. In view of above, it was held that the plaintiff was entitled for deemed date of promotion on the post of Commercial Assistant w.e.f 17.12.1974 and to this extent, the judgment and decree of the trial Court, granting the aforesaid benefit w.e.f 16.06.1974 was modified.

[8]. The contention of learned counsel for the petitioner that the plaintiff was appointed in General Category, therefore, he was

not entitled for the benefit of B.C category from 1974 onwards was found to be devoid of merits as no such stand was taken by the defendant/petitioner in the written statement and the stand was found to be beyond pleadings. As per office order Ex.P19 issued by the petitioner, name of the plaintiff was considered and cleared for promotion to the post of Circle Superintendent under B.C quota.

[9]. The appeal filed by the plaintiff was partly accepted, whereas cross appeal filed by the petitioner/Nigam and cross objections were dismissed. Plaintiff was held entitled to the modified relief to the extent that he was entitled to deemed date of promotion on the post of Commercial Assistant w.e.f 17.12.1974 when his immediate junior Santu Lal was given this benefit of deemed date of promotion. Plaintiff was also entitled to the consequential promotions on subsequent posts with effect from the date on which aforesaid Santu Lal or any other junior to the plaintiff was given promotion with all consequential benefits of promotion, revision of pay, arrears, pensionary benefits at par with Santu Lal and other juniors who were promoted on the said post earlier than the plaintiff along with interest @ 8% per annum.

[10]. Thereafter, the execution petition was filed by the plaintiff/decreed holder. Vide order dated 22.08.2016, the Executing Court adjourned the case to 27.09.2016 for awaiting compliance of the order for which the benefit was granted to the

plaintiff/respondent i.e. the decree passed by the Lower Appellate Court.

[11]. Against the order dated 22.08.2016, the petitioners filed civil appeal before the Additional District Judge along with application for condonation of delay. Lower Appellate Court dismissed the appeal vide order dated 12.10.2016 on the ground that in the order dated 22.12.2015 passed by the Lower Appellate Court, it was held that the plaintiff had passed the departmental examination in August 1972. Santu Lal had passed the departmental examination on 17.12.1974. Mange Ram had passed the aforesaid departmental examination in November 1973. Therefore, as per judgment and decree dated 22.12.2015 passed by the Lower Appellate Court, plaintiff was held entitled to all consequential benefits at par with Santu Lal or other juniors who were promoted to the post earlier to him. Vide order dated 22.08.2016, Civil Judge (Junior Division), Hisar has only granted the benefits to the plaintiff as per judgment and decree dated 22.12.2015 passed by the Lower Appellate Court thereby granting benefits to the plaintiff from the date when Santu Lal or any other junior i.e. Mange Ram was given the promotion.

[12]. Evidently, the judgment and decree dated 22.12.2015 passed by the Lower Appellate Court had already attained finality, therefore, finding no substance in the appeal against the order dated 22.08.2016 passed by Civil Judge (Junior Division), Hisar, the

Lower Appellate Court dismissed the appeal after condoning the delay vide order dated 12.12.2016.

[13]. At the time of issuance of notice of motion on 03.12.2016, following order was passed:-

“Learned counsel for the petitioners contends that the executing Court has adverted to seniority of Mange Ram over and above the consideration of decree sought to be executed before the executing Court. The plaintiff was granted deemed date of promotion on the post of Commercial Assistant w.e.f. 17.12.1974 when his Junior Santu Lal was given deemed date of promotion. Plaintiff was held entitled to consequential promotion on subsequent posts when his immediate junior Santu Lal or any other junior to the plaintiff was given promotion with all consequential benefits of promotion, revision of pay, arrears and pensionary benefits at par with Santu Lal.

Learned counsel further contends that Mange Ram was never junior to the plaintiff, rather he belongs to the Scheduled Caste category, whereas plaintiff belongs to Backward Class category.

Notice of motion for 22.12.2016. Notice re: stay also.

Process dasti as well.”

[14]. Learned counsel for the petitioners submitted that since Mange Ram was belonging to Scheduled Caste category and he was not junior to the plaintiff, therefore impugned orders in execution are illegal.

[15]. On the other hand, learned counsel for the respondent submitted that as per H.S.E.B Manual of Orders, 1953, confirmation

of a Senior Clerk if he has been directly recruited as such, will not be appointed in a substantive capacity in his post unless he has passed the examination in Papers I to IV. If he fails to pass the examination in papers I to IV within three years of his first appointment in the Branch, his increments falling due after the first two increments from his first appointment, will be withheld until he passes the examination and will not be granted with retrospective effect on his passing the examination. On passing the examination he will, with effect from the date following that on which the examination ended, be entitled to the date of pay which would have been admissible to him in his increment not been withheld for his failure to pass the examination.

[16]. Learned counsel further highlighted that as per Punjab P.W.D. (E.B) Provincial Service Class III (Subordinate Posts) Rules, 1952, on the completion of the period of probation of any member of the service, the appointing authority may confirm such person in the post or if his work or conduct has in the opinion of the appointing authority not been satisfactory or he has not been able to pass the Departmental Accounts Examination, the appointing authority may on or before the expiry of the period of probation revert him to his substantive post, if any, or former post if he had been recruited from another Department of Government or dispense with his services if appointed directly. The seniority of the members of the service for

the employees in each class of appointment was to be determined on the following parameters:-

- i) Prior to confirmation (i.e. in the case of persons serving on probation or in an officiating capacity) in the order of the dates of their appointment or if such date be the same in respect of two or more persons, in the order of their ages, the older being placed above the younger.

[17]. Vide letter dated 08.06.1995, Haryana State Electricity Board issued the letter to all the Chief Engineers on the subject grant of deemed date of promotion to the SC/BC category in respect of UDC to CA. The Board allowed the reservation in promotion w.e.f 18.07.1973 to all the SC/BC employees and also issued clarification to that effect vide letter dated 28.03.1995. The deemed date of promotion in respect of SC/BC employees was worked out and a list was prepared. According to the list prepared by the Board, name of Mange Ram was shown to be at serial No.1 and date of passing of departmental accounts exam was shown to be in the month of November 1973. The name of the plaintiff/respondent was shown to be at serial No.32 and date of passing of the departmental accounts exam was shown to be November 1969, though it was wrongly recorded as the correct month and year of passing of exam by the plaintiff/respondent was August 1972.

[18]. Evidently, the respondent passed the departmental accounts exam prior to Mange Ram (SC), therefore, the deemed

date of promotion as per the letter dated 08.06.1995 was to be awarded to the employees on the basis of Punjab P.W.D. (E.B) Provincial Service Class III (Subordinate Posts) Rules, 1952 based on passing of departmental accounts examination. Learned counsel also relied upon the office order No.136/SE/HR dated 29.03.2017 passed by the petitioner/Nigam, wherein the benefit was granted to the respondent subject to outcome of the present revision petition. The order was passed thereby granting benefit subject to decision of the revision petition. In the event of acceptance of the revision petition, it was ordered that the respondent will have to deposit the payment along with interest made to him by virtue of the said order and the deduction will be made from the pension without giving any notice. The said order was passed on the re-consideration of the issue. Even the requisite demand draft to the tune of Rs.5,96,037/- was prepared, but the respondent has different submissions in the context of intention of the petitioner in not obeying the judgment and decree passed by the Lower Appellate Court.

[19]. Evidently, the judgment and decree dated 22.12.2015 passed by Additional District Judge, Hisar had already attained finality. Thereafter, the factum of Mange Ram having passed the departmental accounts examination in November 1973 was considered and Mange Ram was considered to be junior to the respondent in view of his passing the examination in August 1972.

[20]. In my considered opinion, the plaintiff/respondent has been rightly awarded the benefit of deemed date of promotion on the post of Commercial Assistant with effect from the date on which his juniors were given benefits of such promotion. Besides Santu Lal, the plaintiff/respondent was granted deemed date of promotion from the date on which his other juniors were given promotion with consequential benefits of revision of pay, arrears, pensionary benefits at par with such juniors who were promoted to the said posts earlier than the plaintiff along with interest @ 8% per annum. The factum of Mange Ram to be junior to the plaintiff/respondent was considered in terms of passing of departmental accounts test exam in terms of Rules 3 and 9 of the Punjab P.W.D. (E.B) Provincial Service Class III (Subordinate Posts) Rules, 1952 and para No.13(ii) of the Manual of Orders, 1953.

[21]. In view of above, I find no error of jurisdiction in the order dated 22.08.2016 passed by Executing Court and order dated 12.10.2016 passed by the Lower Appellate Court. This revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

26.09.2017
Prince

Whether reasoned/speaking	Yes/No
Whether Reportable	Yes/No