

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

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**RSA No.1964 of 1994 (O&M)
Date of Decision : 08.12.2017**

State of Punjab and others

..... Appellants

Versus

Surinder Kumar and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Aditya Sharda, AAG, Punjab.

Mr. Jasjeet Singh, Advocate
for the respondents.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the judgment of the lower Appellate Court reversing that of the trial Court and thereby decreeing the suit filed by the respondent No.1.

The respondent No.1 was appointed as a Helper in the Punjab Roadways Ropar Depot in 1974. He was promoted as Assistant Electrician on 01.12.1979. One person who was working as an Electrician was transferred and thereafter on 20.05.1985 the respondent No.1 moved an application for being considered for promotion as Electrician taking the ground that there were 8 posts of Electrician in the Punjab Roadways, Ropar Depot and as per the roster post No.1 and 6 had to be filled up by promotion of scheduled caste candidate (which he was) but not even a single scheduled caste candidate was working as Electrician at that time. His claim not having found favour he filed the instant suit.

The trial Court held that since the previous incumbent had been transferred out and his successor was also appointed by transfer, the respondent No.1 had no right to claim promotion. In appeal the lower Appellate Court held that it was not the case of the appellants that the seniority of Electricians was maintained on a State wide basis, and if that was so then the claim of the respondent had to be seen against the vacancies at the Ropar Depot.

The appellate Court further noticed that the appellants had accepted that there was no scheduled caste Electrician in the Ropar Depot who had been promoted in the Ropar Depot and consequently decreed the suit directing the appellants to consider the claim of the respondent No.1 for promotion from the date the post had become vacant. Hence this appeal.

Learned Assistant Advocate General has argued that even the first promotion given to the respondent No.1 was on the basis of reservation.

Learned counsel for the respondents has retorted by arguing that at that time there was no bar for repeated consideration for promotion by reservation and in any case the basis on which the respondent No.1 was excluded from consideration was completely illegal.

I find myself in favour with the arguments raised by the learned counsel for the respondents. Once it was not the case of the appellants that the seniority of Electricians was maintained on a State wide basis it was incumbent upon them to show why the respondent No.1 was not to be considered for promotion as per the system.

In the circumstances, no fault can be found with the judgment

Appeal is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

08.12.2017
pooja sharma-I

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No