

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

RSA No. 660 of 2002 (O&M)
Date of decision : September 26, 2017

Hardip Singh,

..... Appellant

v.

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Sumeet Mahajan, Sr. Advocate with
Ms. Ramneeq Kaur, Advocate
for the appellant.

Mr. HS Sitta, AAG Punjab

Ajay Tewari, J (Oral)

This appeal has been filed against the concurrent judgments of the Courts below dismissing the suit of the appellant.

Admitted facts are that there were certain posts of Clerk-cum-Steno Typist available in the office of the Food and Civil Supplies Controller, Ludhiana. A selection committee headed by the Deputy Commissioner Ludhiana called for the candidates from the Employment Exchange and after consideration of the claims, the appellant was selected. By order dated 28.7.1994, an appointment letter was issued to him. However, 15 days later, the impugned order was passed on 12.8.1994 whereby the appointment order was cancelled on the ground that the Deputy Commissioner was only the recommending authority and the appointing

authority was the government. The appellant filed the instant civil suit challenging the order dated 12.8.1994 seeking a declaration that he had been validly appointed by order dated 28.7.1994 and the State could not cancel his appointment. Both the Courts below found that there were binding general instructions issued by the Chief Secretary as per which for such selections the Deputy Commissioner was only the recommending authority and the order of appointment had to be issued by the government. Consequently, both the Courts below came to the conclusion that the appointment order issued to the appellant was ultra vires of the powers of the Deputy Commissioner and the order dated 12.8.1994 was, therefore, not illegal and dismissed the suit.

Learned counsel for the appellant has pointed out the last line of the impugned order which is to the following effect :-

“Your name has been sent duly recommended.”

As per the learned counsel, even the impugned order recorded that the appellant had been recommended for appointment but till date no action has been taken by the respondent-State on that recommendation and the State should be now asked to consider that recommendation and pass an order.

Per contra, learned AAG Punjab has argued that this alternative relief could have been specifically pleaded and claimed in the plaint and then the State would have replied thereto and the Court would have taken a view but in the parameters of the suit as framed it would not be possible for the Court to give any finding on this aspect and that is why the Courts below did not consider the case from this angle. He has also pointed out that this plea could have been raised even by amendment but that too has

not been done.

In my opinion, the arguments of learned AAG Punjab have to prevail. It cannot be lost sight of that this Court is sitting as a civil court and not as a writ court where the jurisdiction is much more expansive. The suit as framed only sought to vindicate the right of the appellant as an appointed candidate and he did not make any reference in the entire plaint to an alternative right of being a selected candidate. Consequently, there was no occasion for the State to reply to that contention. In the circumstances, I regret my inability to grant any relief to the appellant and consequently dismiss this appeal.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

September 26, 2017
'kk'

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No