

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

RSA-3158-2005

Decided on: 03.11.2017

Kulwant Rai

.....Appellant

vs.

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Rajesh Punj, Advocate,
for the appellant.

Mr. Paramjit Singh, AAG, Haryana.

MAHABIR SINGH SINDHU, J.

The present regular second appeal for short “Second Appeal” under Section 100 of the Code of Civil Procedure, 1908, for short “CPC”, has been filed by the plaintiff-appellant against the impugned judgment and decree dated 11.02.2005 passed by learned District Judge, Ambala, hereinafter referred as “1st Appellate Court” vide which the appeal filed by the defendants-respondents has been allowed and the judgment and decree dated 26.05.2003 passed by Ld. Civil Judge (Jr. Division), Ambala City hereinafter referred as “Trial Court” has been reversed.

2. The brief facts of the case are that the plaintiff-appellant filed a suit for declaration to the effect that he is entitled for regulation of his services on the post of “Fitter” from the date when his juniors have been regularized or in the alternative with effect from (w.e.f.) 12.10.1995. Further prayer was that the office order dated 12.10.1995 (Ex.P-1) passed by General Manager, Haryana Roadways Yamnua Nagar-

defendant/respondent No.3 vide which his services have been regularized on the post of “Helper Motor Mechanic”, are illegal, arbitrary, against the principles of natural justice and thus, null and void with further relief of all consequential benefits.

It was pleaded that plaintiff-appellant was appointed as Fitter on 01.03.1981 in Haryana Roadways and has been performing his duties with the best of his abilities, but to his surprise his services were terminated in August 1985. The termination of the plaintiff-appellant led to raising an Industrial Dispute and a reference was made by the Government of Haryana to the Ld. Labour Court, Ambala, hereinafter referred as “Labour Court” and the same was answered in his favour by way of an award dated 22.02.1994. On the basis of a settlement arrived at between the parties, the plaintiff-appellant was reinstated as Fitter with continuity of service w.e.f. 23.02.1994 alongwith 35% back wages.

It has been further pleaded that right from the joining of his services, the plaintiff-appellant has been working as a Fitter; but to his surprise he was regularized on the lower post of Helper Motor Mechanic vide order dated 12.10.1995 by defendant-respondent No.3 with reference to Letter/Memo dated 12.01.1995 (Ex.D-10) as well as instructions dated 27.05.1993 (Ex.D-4) issued by the Transport Commissioner, Haryana-defendant/respondent No.2 and State of Haryana-defendant/respondent No.1 respectively.

It has further been pleaded that the order of regularization dated 12.10.1995 have been passed without affording any opportunity of hearing to the plaintiff-appellant.

3. The suit was opposed by defendants-respondents and filed written statement raising preliminary objections inter alia to the effect that

the plaintiff-appellant is estopped from challenging the order dated 12.10.1995 as he himself accepted the offer of appointment on regular basis on the post of Helper Motor Mechanic and thus, the suit is not maintainable. On merits, it has been submitted that plaintiff-appellant was appointed as a Fitter vide order dated 10.04.1981 w.e.f. 01.04.1981 to 30.04.1981 and not from 01.03.1981 and that too on daily wage basis.

So far as termination of services of plaintiff-appellant in August 1985, raising an Industrial Dispute, settlement between the parties and reinstatement as Fitter w.e.f. 23.02.1994 alongwith 35% back wages are concerned, the same has not been disputed.

It is further submitted in reply to para 4 of the plaint that plaintiff-appellant appeared for a test conducted by Departmental Technical Committee and he was found fit for appointment as Helper Motor Mechanic. Thereafter, a list of successful daily wagers was prepared and recommended by the said Committee vide memo dated 12.01.1995 for regularization and consequently, an offer of appointment on the post of Helper Motor Mechanic was made to the plaintiff-appellant on regular basis vide memo dated 12.10.1995.

It has also been submitted that the offer of appointment was accepted by the plaintiff-appellant without any objection; rather he joined his duties on the post of Helper Motor Mechanic at his own by submitting his joining report and thus, he is estopped from challenging his appointment as Helper Motor Mechanic by way of the present suit.

It has again been submitted that plaintiff-appellant was at liberty to remain as Fitter on daily wage basis or to join as Helper Motor Mechanic on regular basis and there was no compulsion. It is also the stand of the defendants-respondents that plaintiff-appellant does not possess the

requisite qualification for the post of Fitter i.e. “Matriculation with diploma from an Industrial Training Institute in the concerned trade” as the plaintiff-appellant has not passed even the middle class examination as per his service record.

So far as opportunity of hearing before passing the order dated 12.10.1995 is concerned, it has been pleaded that the same was not binding upon the plaintiff-appellant and that was only an offer and he could have declined the same, but instead he accepted at his own.

Plaintiff-appellant filed replication by reiterating his pleas raised in the plaint, however, he did not dispute the facts that he was appointed w.e.f. 10.04.1981 as Fitter on daily wage basis and that he has not passed the middle class examination.

4. On the basis of pleadings of both the parties, the Trial Court framed the following four issues:-

1. Whether the plaintiff is entitled for regularization of his services as Fitter from the date the services of his juniors were regularized? OPP
2. Whether the suit of the plaintiff is not maintainable as he has not filed any appeal before the filing of the present suit? OPD
3. Whether the plaintiff is estopped from disputing the orders dated 12.10.1995 as the plaintiff accepted the offer of appointment on regular basis to the post of Helper/Motor Mechanic made to him vide order dated 12.10.1995? OPD
4. Relief.

5. In order to prove his case, the plaintiff-appellant himself appeared as PW-1 and placed on record the following documents:-

- Ex. P-1 - Impugned order dated 12.10.1995
- Ex. P-2 - Legal notice dated 02.10.1997
- Ex. P-3 to P-6 - Postal receipts.
- Ex. P-7 to P-9 - Acknowledgment receipts.

On the other hand, the defendants-respondents examined DW-1 Raghbir Ram, Clerk and brought on record the following documents in support of their defence:-

- Ex. D-1 - Letter dated 05.06.1992
- Ex. D-2 - Letter dated 16.10.1992
- Ex. D-3 - Letter dated 26.05.1993
- Ex. D-4 - Letter dated 27.05.1993
- Ex D-5 - Letter dated 18.05.1994
- Ex. D-6 - Letter dated 25.07.1994
- Ex. D-7 - List of daily wagers who failed in tests conducted by Technical Test Committee
- Ex. D-8 - Letter dated 07.09.1994
- Ex. D-9 - List of proceedings along with the trade for which the daily wage employee were found fit.
- Ex.D-10 - Letter dated 12.01.1995
- Ex. D-11 - Office order dated 12.10.1995.
- Ex. D-12 - Affidavit of DW-1 Raghbir Ram dated 04.09.2002

6. After taking into consideration the material available on record, the Trial Court decided issues No. 1 & 3 in favour of the plaintiff-appellant by holding that he was neither given; nor accepted any such offer made by the defendants-respondents and he has been working as Fitter since joining of his service and thus entitled for regularization. Issue No. 2

was disposed of as having not been pressed and ultimately decreed the suit vide judgment and decree dated 26.05.2003.

7. Aggrieved against the judgment and decree passed by the Trial Court, the defendants-respondents preferred an appeal and the same was allowed by 1st Appellate Court vide impugned judgment and decree dated 11.02.2005 and reversed the judgment and decree of Trial Court and dismissed the suit of the plaintiff-appellant.

A perusal of the judgment and decree passed by 1st Appellate Court reveals that the findings on issues No.1 and 3 recorded by the Trial Court have been reversed while observing that plaintiff-appellant had accepted the offer dated 12.10.1995 at his own by submitting his joining report. Further, it was held that plaintiff-appellant did not fulfill the requisite qualification for the post of Fitter, as he was only middle pass.

It is necessary to mention here that defendants-respondents moved an application under Order 41, Rule 27 of the CPC for bringing on record the joining report dated 12.10.1995 submitted by the plaintiff-appellant by way of an additional evidence and the same was allowed by 1st Appellate Court and the joining report was taken on record as Ex.D-12 (it should be Ex.D-13).

8. Hence, the present appeal.

9. It has been argued by Ld. Counsel for the plaintiff-appellant that the 1st Appellate Court has legally erred while allowing the application for additional evidence filed by the defendants-respondents at such a belated stage and the same was liable to be dismissed in view of the provisions of Order 41, Rule 27 of CPC.

It has further been argued that plaintiff-appellant was never given any option in terms of the instructions dated 26.05.1993 (Ex. D-3) on

the lower post of Helper Motor Mechanic and as such, the 1st Appellant Court has committed a grave error of law. He has further argued that the plaintiff-appellant never accepted the post of Helper Motor Mechanic; rather he was satisfied as a daily wager on the post of Fitter at that time, thus unilateral decision has been taken by the defendants-respondents to his disadvantage being in dominant position and the plaintiff-appellant should not suffer for that.

It has further been argued that the reasoning given by the 1st Appellant Court that plaintiff-appellant is not fulfilling the requisite qualification for the post of Fitter is palpably wrong and unsustainable in view of the settled legal proposition that long experience itself is a requisite qualification for the post in question and the benefit of regularization should not be denied to an employee merely on such technicalities and a strong reliance is placed on the judgment of Hon'ble Supreme Court reported as **Bhagwati Parsad and others vs. Delhi State Mineral Development Corporation** (1990) 1 SCC 361.

On the other hand, learned counsel for the defendants-respondents has opposed the contentions of learned counsel for the plaintiff-appellant and pressed into service the statutory Rules, namely, Haryana Transport Department (Group C) Haryana Roadways Service Rules, 1995; hereinafter referred as "Rules of 1995" framed by the State of Haryana while exercising its powers under proviso to Article 309 of the Constitution, duly notified by Haryana Government Transport Department Gazette Notification dated 06th January, 1995. Pertinent reference has been made to Rule 7 alongwith Appendix B (Entry 14) dealing with the academic qualification and experience for the post of Fitter and that is "Matric with Hindi alongwith Industrial Training Institute Certificate in the trade". He

has further argued that the plaintiff-appellant joined on the post of Helper Motor Mechanic in pursuance of the offer of appointment dated 12.10.1995 with his open eyes and ultimately superannuated from the post of Helper Motor Mechanic on 31.12.2011 and received all the retiral benefits from the defendants-respondents.

10. Heard learned counsel for both the parties and perused the paper book alongwith its record carefully and after considering the same, the following substantial questions of law are canvassed for adjudication of the present second appeal:-

- (i) Whether the 1st Appellant Court has legally erred while allowing the application for additional evidence filed by the defendants-respondents and acted against the provisions of Order 41, Rule 27 of CPC?
- (ii) Whether in view of the facts and circumstances of the present case, the plaintiff-appellant is entitled for regularization on the post of “Fitter” instead of “Helper Motor Mechanic” w.e.f. 12.10.1995 alongwith all consequential benefits?

Point No.1

11. So far as the point for additional evidence is concerned, the same does not require any interference for the reasons that the document which has been allowed to be brought on record by way of an additional evidence is the joining report dated 12.10.1995 submitted by the plaintiff-appellant in pursuance of the office order dated 12.10.1995 and the same goes to the root of the case. Although, the factum of joining report was not disclosed by the plaintiff-appellant in the plaint, but the same was duly submitted by the defendants-respondents in their reply to para 4 and 5 of their written statement as well as in the affidavit Ex. D-12 tendered in

support of their evidence. No doubt, the 1st Appellate Court has inadvertently assigned the number as Ex.D-12 to the joining report and in fact it should have been mentioned as Ex.D-13 in continuation of the documents already on record, but that will not make any difference.

The application for additional evidence was filed by the defendants-respondents on 08.10.2004 for bringing on record the two documents, namely, the initial order of appointment of the plaintiff-appellant on the post of Fitter dated 10.04.1981 and joining report dated 12.10.1995 on the post of Helper Motor Mechanic in pursuance of the order of regularization. There is no dispute that plaintiff-appellant filed his reply to the application for additional evidence and after its consideration, by hearing of both the parties, the 1st Appellate Court allowed the application partly to the extent of placing on record the joining report only vide order dated 11.02.2005 specifically observing that joining report of the plaintiff-appellant is very material for deciding the matter in controversy and even plaintiff-appellant admitted his signature on the same and authenticity of joining report had not even been disputed and consequently the same was rightly allowed and these observations are very categorical as is clear from the contents of para 16 of the impugned judgment and the relevant part reads as under:-

“..... X X X X.....

However, so far as joining report of respondent-plaintiff is concerned the same is very material for deciding the present controversy. Respondent-plaintiff had admitted his signatures on the said joining report. Authenticity of the joining report has not been disputed on behalf of the respondent-plaintiff. This document is very much material for deciding the controversy in dispute. Hence,

there is substantial cause for allowing the application of the appellant-State for additional evidence to this extent only. The application for additional evidence is partly allowed and joining report of the respondent-plaintiff to join as Helper Motor Mechanic is permitted to be tendered in evidence and the same is exhibited as Ex.D-12.”

Thus, the recourse taken by 1st Appellate Court while allowing the additional evidence to the extent of bringing on record the joining report of plaintiff-appellant is perfectly in consonance with the letter and spirit of Order 41, Rule 27 of the CPC and no fault can be found with the same.

Point No.2

12. This is an admitted fact that initially the plaintiff-appellant was inducted as Fitter on daily wage basis by defendant-respondent No.3-G.M. Haryana Roadways Yamuna Nagar w.e.f. 01.04.1981 to 30.04.1981 and he continued as such till 1985 when his services were terminated. There is no dispute that the plaintiff-appellant was reinstated as Fitter in view of the award by Labour Court w.e.f. 23.02.1994 with 35% back wages.

At the same time, the defendants-respondents have duly proved that plaintiff-appellant appeared for a test before Departmental Technical Committee for appointment as Helper Motor Mechanic. Although, this fact is not disclosed by the plaintiff-appellant in the plaint, but on this point the findings of fact has been acknowledged even by the Trial Court in para 16 of its judgment and the relevant part reads as under:-

“..... X X X X.....

Defendants have taken the ground that the plaintiff appeared for a test before Departmental Technical Committee. Though this fact has not been mentioned by the plaintiff in his plaint yet this fact has not been denied by him in the replication filed by him, therefore, it shall

be deemed to be admitted by the plaintiff that he appeared for the departmental test”.

It also goes un-disputed that a list of successful daily wagers was displayed by the defendants-respondents vide letter dated 12.01.1995 (Ex.D-10) and name of the plaintiff-appellant is mentioned at Sr. No. 94 which reveals that he was found successful for the post of Helper Motor Mechanic in Haryana Roadways Yamuna Nagar Depot.

13. In pursuance of the recommendations contained in letter dated 12.10.1995 (Ex.P-1 & D-11), the services of the plaintiff-appellant were regularized by defendant-respondent No.3 on the post of Helper Motor Mechanic in the pay scale of Rs.750-12-870-EB-14-940 plus usual allowances as admissible to Haryana Government employees from time to time against the vacant post subject to the following terms and conditions:-

“1. He will be on probation for a period of two years which can be extended upto three years if his work & conduct is found unsatisfactory, his services will be terminated.

2. His regularization is subject to the condition that his character & antecedents are verified by the concerned Distt. Magistrate to be good.

3. The regularization will be terminable on one month's notice from either side provided that it will be to pay in lieu of notice the official salary etc. to Government by which the notice falls short of one month and similarly, if he wish to resign his post, he can to do so by depositing with Government to salary & allowance in lieu of notice in respect of the period by which the notice given by him falls short of one month.

4. In respect of matters not specified here in condition of service will be governed by orders in force from time to time.

5. He will have to furnish on affidavit that he is living with one wife and that he has never been convicted by any criminal court in a case involving moral turpitude.

6. He can be transferred to any other office of the Haryana Transport Department.

7. He will produce the medical certificate of fitness on entry into Government Service from the Chief Medical Officer of concerned District”.

14. The plaintiff-appellant, without raising any objections or making any grievance, submitted his joining report dated 12.10.1995, however, he conveniently did not disclose the same in his plaint and the same has been brought on record by the defendants-respondents by way of an additional evidence. A perusal of joining report dated 12.10.1995 clearly reveals that the plaintiff-appellant duly accepted the regularization on the post of Helper Motor Mechanic in pursuance of the order dated 12.10.1995 and he continued since then till he attained the age of superannuation on 31.12.2011 and finally received all his retiral benefits. The plaintiff-appellant first time after a period of almost two years by way of his legal notice dated 02.10.1997 (Ex.P-2) raised his grievance for regularization on the post of “Fitter”, but even in the legal notice itself, he did not disclose that he had already joined on the post of Helper Motor Mechanic on the basis of his joining report dated 12.10.1995 or that he was forced by the defendants-respondents in any manner to join on the said post and thereafter only, the present suit was filed only on 17.02.1998.

The argument that plaintiff-appellant was not given any option in terms of letter dated 26.05.1993 (Ex.D-3) is fallacious and not acceptable in view of the fact that the order dated 12.10.1995 for regularization itself was an offer and was not binding upon the plaintiff-appellant. Even

otherwise, an order for appointment on a public post even on regular basis can be considered only as an offer and if the concerned employee does not wish to join on the post in question, then he or she may decline the offer; but once it is accepted without raising any objections to any of its terms and conditions stipulated therein, then the offer of appointment shall be deemed to be accepted and that will be a concluded contract for the public employment for the post in question. Thenceforth, the relationship between the employee and employer shall be governed under the Service Rules governing the post in question, as in the present case, the Rules of 1995 shall be applicable.

The another point raised by Ld. Counsel for the plaintiff-appellant that 1st Appellate Court has wrongly accepted the appeal on the ground of non-fulfillment of requisite qualification for the post of Fitter by the plaintiff-appellant in view of his long experiences is not acceptable in view of the binding nature of the statutory Rules of 1995.

To decide this point, it is necessary to refer Rule 7 alongwith Appendix B of Rules of 1995 and the relevant part of the same reads as under:-

Rule 7-“No person shall be appointed to any post in the service unless he is in possession of qualifications and experience specified in column 3 of Appendix B to these rules in the case of direct requirement and those specified in column 4 of the aforesaid Appendix in the case of appointment other than by direct requirement”.

Entry No.14 contained under Appendix B reads as under:-

Appendix B

Technical Staff

Sr.No.	Designation of posts	Academic Qualification and experience, if any, for direct recruitment	Academic qualification and experience, if any for appointment other than by direct recruitment	Remarks, if any
1	2	3	4	5
1 to 13		x x x x	x	
14.	Fitter	(i) Matric with Hindi with Industrial Training Institute Certificate in respective trade.	(i) Middle with Hindi. (ii) Three years' experience on the post of Assistant Fitter.	

A perusal of the entry 14 reproduced hereinabove clearly stipulates that the requisite qualifications required to the post of Fitter for appointment on “direct recruitment” is Matric with Hindi with Industrial Training Institute Certificate in respective trade. The word “direct requirement” has also been defined under Rule 2(d) of the Rules of 1995 and which reads as under:-

“Direct Recruitment means an appointment made otherwise than by promotion from within the Service or by transfer of an official already in the Service of the Government of India or any State Government.”

Even otherwise, there is no dispute that in the present case, the plaintiff-appellant is not claiming the regularization on the post of Fitter on promotion basis; rather the same will amount to a “direct appointment”. Thus, the qualification prescribed under entry 14, Appendix-B under Rule 7 is the 'requisite qualification' under the statutory rules and the same cannot be done away in view of the facts and circumstances of the present case and the opinion of the 1st Appellant Court is affirmed on that count being legal and valid.

15. The argument that long experience itself is a qualification for regularization of the plaintiff-appellant on the post of Fitter is not acceptable for another reason also that as discussed above, there are statutory Rules of 1995 which have prescribed the requisite qualification for the post of Fitter. Admittedly, the plaintiff-appellant has not even passed the

middle examination and qualification required for the post of Fitter is matric with ITI and the appellant actually worked w.e.f. 01.4.1981 to August 1995. As per his own case, although he was reinstated on account of the settlement by Labour Court w.e.f. 23.02.1994 and thereafter, he was regularized and joined on the post of Helper Motor Mechanic on 12.10.1995 so actually and factually he worked on the post of Fitter less than 6 years and thereafter, he continuously worked on the post of Helper Motor Mechanic till his superannuation i.e. 31.12.2011 and thereafter he received all his retiral dues. Therefore, there will be no justification at this stage to regularize the services of the plaintiff-appellant on the post of Fitter, when he has already received all the retrial benefits against the post of Helper Motor Mechanic.

16. The judgment in case of Bhagwati Prasad (supra) is not helpful to the case of the plaintiff-appellant in view of the judgment of Hon'ble Supreme Court in **Secretary, State of Karnataka And others vs Umadevi and Others (2006) 4 SCC 1**, and he has no right of regularization, wherein it was clearly held in para 54 that “it is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents”.

Still further, as recently observed by Hon'ble Supreme Court in **State of Rajasthan and others vs. Daya Lal and others (2011) 2 SCC 429**, the judgment rendered in **Bhagwati Prasad's** case (supra) already stands overruled by the Constitution Bench in Uma's Devi case and refencece in this regard can be made in para 21 of the judgment in Daya Lal's case which reads as under:-

“The decision relied upon by the High Court, namely, the decision in Anshkalin Samaj Kalyan Sangh of the High Court no doubt directed the State Government to frame a scheme for regularization of the part-time cooks and chowkidars. It is clear from the said decision, that such scheme was intended to be a one-time measure. Further the said decision was rendered by the High Court prior to Uma Devi, relying upon the decision of this Court in Daily Rated Casual Labour vs. Union of India, Bhagwati Prasad v. Delhi State Mineral Development Corpn. and Dharwad District PWD Literate Daily Wage Employees Assn. v. State of Karnatka. These directions were considered, explained and in fact, overruled by the Constitution Bench in Uma Devi's. The decision in Anshkalin Samaj Kalyan Singh is no longer good law. At all events, even if there was an one time scheme for regularisation of those who were in service prior to 1.5.1995, there cannot obviously be successive directions for scheme after scheme for regularisation of irregular or part-time appointments. Therefore the said decision is of no assistance.

17. No other point was raised by either of the parties.
18. In view of the discussions made hereinabove, there is no merits in the present second appeal and the same is dismissed. Consequently, impugned judgment and decree dated 11.02.2005 passed by learned District Judge, Ambala is affirmed.
19. Both the parties shall bear their own costs.

(MAHABIR SINGH SINDHU)
JUDGE

03.11.2017
Dinesh

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