

RSA No.3140 of 2017 (O&M)

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

Sr. No.113

RSA No.3140 of 2017 (O&M)
Date of Decision: July 18, 2017

BALWANT SINGH

...APPELLANT

Versus

STATE OF PUNJAB AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Puneet Kumar Bansal, Advocate,
for the appellant.

JASPAL SINGH, J.

CM No.7794-C of 2017

Application is allowed as prayed for.

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Challenge in this regular second appeal is to the judgment and decree dated January 31, 2017 passed by learned Additional District Judge, Ferozepur whereby Civil Appeal No.103 of 05.11.2016 was dismissed while upholding judgment and decree dated July 27, 2016 passed by learned Civil Judge (Jr. Divn.)

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Ferozepur vide which suit preferred by the appellant/plaintiff for declaration to the effect that he is entitled to promotion as Deputy Superintendent of Police with effect from the date when the employees junior to him were promoted and also entitled to consequential benefits of proficiency step of refixation of pay and allowances as well as retiral benefits was dismissed.

2. Brief facts giving rise to the instant appeal are that appellant/plaintiff joined the police department as Constable on August 23, 1963. He was promoted to the rank of Inspector w.e.f. August 03, 1992. Since then, he has been working in the same capacity and retired on September 30, 2002 on attaining the age of his superannuation. His name figures at Sr. No.9 of the seniority list of Inspectors. In the month of May, 2001, the State Government has promoted 101 Inspectors to the rank of Deputy Superintendent of Police. Though his name was appearing at Sr. No.18 in the aforesaid list but at the time of passing of promotion order, he was ignored for simple reason that there was some adverse report against him for the period April 01, 1998 to October 23, 1998. On coming to know about adverse remarks in his ACR for aforesaid period, he preferred a representation before The Director General of Police, which was decided on January 10, 2002 in his favour and remarks were expunged. He was intimated about aforesaid order by Senior Superintendent of Police, Patiala vide his endorsement No.542/steno dated January 22, 2002. Thereafter, he moved another representation before Principal Secretary to the Government

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Department for Home Affairs seeking his promotion as Deputy Superintendent of Police from the date when his juniors were promoted but that had remained undecided by the concerned authorities. Thus, on account of non-disposal of aforesaid representation, he was constrained to approach the civil court.

3. The said suit was resisted by defendants/respondents. They filed written statement raising preliminary objections inter-alia on the grounds that suit is not maintainable; that suit is barred by limitation; that suit is bad for non-joinder of necessary parties i.e. his juniors and that plaintiff cannot claim promotion as a matter of right. On merits, it has been admitted that plaintiff was promoted as Inspector and has retired on September 30, 2002. However, it has been pleaded that representation dated October 11, 2001 moved by the appellant/plaintiff, was considered by the competent authority and was declined. His case for promotion was also considered, when he moved another representation but he was not found fit for promotion and as such, his representation was rejected.

4. Here it would be pertinent to mention that when the case was listed for evidence of appellant/plaintiff before trial court, plaintiff did not adduce any sort of evidence either oral or documentary despite the fact that he was afforded sufficient opportunity including last opportunity to adduce or conclude his evidence. Even an opportunity was also granted subject to payment of cost but he did not adduce or conclude his evidence. Ultimately, trial court was constrained to close the evidence of appellant/plaintiff by orders of

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the court and suit was dismissed vide impugned judgment dated July 27, 2016.

5. An appeal preferred against the aforesaid judgment dated July 27, 2016 passed by Civil Judge (Jr. Divn.), Ferozepur, was also dismissed by learned Additional District Judge, Ferozepur vide judgment dated January 31, 2017.

6. Still feeling aggrieved against the judgment and decrees passed by both the courts below, appellant/plaintiff has preferred instant regular second appeal.

7. Assailing the impugned judgment and decrees passed by both the courts below, it has been argued with vehemence by learned counsel for the appellant that same are absolutely against the principles of natural justice and settled canons of law. In fact, appellant/plaintiff was not afforded sufficient opportunity to adduce his evidence in support of his claim and his evidence was closed by invoking the provisions contained in Order XVII Rule 3 CPC. Since, appellant/plaintiff was not given sufficient opportunity to adduce his evidence before passing the impugned order and immediately after the closure of his evidence by order. Thus, he deserves to be provided at least two opportunities to adduce his evidence and impugned judgment is liable to be set aside and case be remanded to trial court for deciding the same afresh. Otherwise also, appellant/plaintiff is entitled to the promotion of Deputy Superintendent of Police w.e.f. from the date when his juniors were promoted as Deputy Superintendent of Police. Consequent upon his promotion, he is also

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entitled to benefits of proficiency step ups as well as re-fixation of his pay and allowance as well as retiral benefits.

8. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the appellant, but this Court does not find any legal and factual position.

9. First of all, it would be appropriate to mention here that appellant/plaintiff was granted ample opportunity to adduce and conclude his evidence but despite that fact he miserably failed either to examine himself as a witness or to adduce any oral or documentary evidence in support of his claim. In such a situation, it would not be desirable or justifiable that judgment and decrees are set aside and case is remanded back to trial court for fresh decision. Otherwise also, a glance at the various document(s) available on file as well as impugned judgment and decrees transpires that appellant/plaintiff retired from service on September 30, 2002 on attaining the age of superannuation. He was not considered for promotion when his juniors were promoted on account of adverse remarks appearing in his ACR pertaining to the period April 01, 1998 to October 23, 1998. Though, he moved a representation for expunction of his adverse remarks but that was declined. Thereafter, he moved another representation for his promotion as Deputy Superintendent of Police but that was also declined by the competent authority after considering the same observing that he is not fit for promotion as Deputy Superintendent of Police. Not only this, after rejection of his representation regarding expunction of adverse

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remarks as well as another representation with regard to his promotion dated January 22, 2002, appellant/plaintiff remained tight lipped and inactive. He did not challenge aforesaid orders before any competent authority including civil court. After the expiry of approximately more than a decade, he filed a suit in the year 2014, which has been dismissed. This Court does not find any infirmity, illegality or perversity in the impugned judgment and decrees passed by both the courts below.

10. As a sequel to the aforesaid discussion, this Court does not find any merit in the instant appeal. Otherwise also, there is no substantial question of law what to say any substantial question of law to proceed with instant appeal. Consequently, appeal is dismissed, whereby impugned judgment and decrees passed by both the courts below are upheld.

11. No order as to costs.

July 18, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No