

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1253 of 2009 (O&M)

Date of Decision: May 10, 2018

Gurcharan Singh

...Appellant

Versus

State of Punjab & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.S.K.Sharma, Advocate,
for the appellant.

Ms.Devaki Anand Sullar, DAG, Punjab,
for the State.

AMIT RAWAL, J.

Appellant-plaintiff is aggrieved of concurrent findings of fact and law, whereby his suit seeking declaration that he is entitled to continue as Work Charge Road Mate by treating his reversion as nullity being against rules and for mandatory injunction directing defendant No.2 to appoint the plaintiff as Morter Mate with retrospective effect from the year 1987 and to pay him all the arrears of pay for which he is entitled to, has been dismissed.

Appellant-plaintiff instituted the aforementioned suit on the premise that he was posted as a Work Mate in the office of Sub Divisional Engineer, Rural Works, Sub Division, PWD (B&R), Sirhind and was promoted as Morter Mate for a period of three months by the then Executive Engineer, Construction Division (B&R), Nabha vide order dated 30.4.1986 in the pay scale of Rs.400-600 and remained posted there upto August, 1987, i.e., for a period of more than one year w.e.f. 6.5.1986 when he was

relieved from the post of Work Charge Road Mate in order to join as Morter Mate.

The appellant-plaintiff was reverted back to his previous post illegally and without assigning any reason. The rules provide that once a person got promotion, he cannot be reverted back unless and until there is some specific charge against him. The plaintiff was discharging his duties efficiently and satisfactorily on the promotional post and reversion of the plaintiff, particularly when no regular person joined vide him, is illegal, ultra vires, unconstitutional and against the principles of natural justice and as well as service rules and regulations. Plaintiff had completed more than 240 days on the promotional post without any break and as per the decision rendered by this Court, he is entitled to regularisation on the post of Road Mate.

The respondent-defendants appeared and filed written statement taking preliminary objections qua cause of action, bad for non-joinder of necessary parties and notice under Section 80 CPC was not legal and valid. On merits, all the averments made by the plaintiff were denied, except some contents of Paras 1 and 2. Plaintiff was only allowed to work as Morter Mate by the Sub Division at Nabha and, hence, question of his relieving and joining did not arise. He was given chance to work as Mortar Mate only for a period of three months purely on temporary basis and as well as for six months. It was also averred that the defendants acted in accordance with rules as work charge categories do not come under the definition of Provincial Service Class I, II, III and IV and, thus, prayed for dismissal of the suit.

Since the parties were at variance, the trial Court framed the

following issues:-

“1. Whether plaintiff is entitled to mandatory injunction as prayed for? OPP

2. Relief.

On 10.11.1997 and 4.3.2004, following additional issues were also framed:-

1A Whether the suit is time barred? OPD

1B Whether the plaintiff is entitled to the declaration as prayed for? OPP

The plaintiff, in support of his case, examined PW-1 Ranjit Singh and himself appeared as PW-2 and also tendered documents. On the other hand, the defendants examined Jaswinder Singh as DW-1. In rebuttal, the plaintiff also examined Bhupinder Singh as PW-3.

The trial Court, on the basis of the evidence brought on record, dismissed the suit and the appeal laid before the Lower Appellate Court was also dismissed.

Mr.S.K.Sharma, learned counsel appearing on behalf of the appellant-plaintiff submitted that the department changed the seniority list without giving any opportunity of hearing. No notice was given to the plaintiff before his transfer to the Roads Division from Building Division. The juniors of the plaintiff were allowed to continue in Building Division and later on they were regularised & promoted to the higher post. The cadre of the plaintiff was bifurcated between the Building Cadre and Road Cadre, which is not permissible. In support of his contention, relied upon the decision rendered by the Delhi High Court in **Union of India and Ors. Versus C.E.M.E.S.Association and ors., 2007 (2) S.C.T. 407** to contend that amalgamation of two cadres could not be done except by amendment of

rules and the Government has no power to merge two cadres of civil and electric streams merely by executive order. No executive instruction/order can override mandate of statutory rules.

It was next contended that the the appellant-plaintiff was wrongly reverted, due to which he suffered a loss of salary and, therefore, the cause of action was recurring and the suit was not barred by limitation. The order of reversion is illegal, null and void and the plaintiff is entitled to promotion as Mortar Mate from the date of his reversion. No notice has been issued to the plaintiff before his reversion and this fact has been admitted by the SDO (Power) while appearing as DW-1. He further submitted that the transfer of the plaintiff outside the cadre could not have been done without his consent. In support of his contention, relied upon the ratio decidendi culled out in **Bahadur Chand Versus State of Haryana and others, 1995 (2) Recent Services Judgments 490** and, thus, urged this Court for setting-aside the findings under challenge by allowing the Regular Second Appeal.

Per contra, Ms.Devaki Anand Sullar, DAG, Punjab, representing the respondent-State submitted that there is no illegality or perversity in the concurrent findings returned by the Courts below. No seniority list of such type of employees are maintained or prepared. Mortar mate is engaged only for the job of construction of buildings. As there was no vacancy against which the plaintiff could be absorbed, therefore, he was reverted back. There was no requirement of sending notice to the plaintiff as he was placed on the post of Morter mate for a short period purely on temporary basis and as such he was rightly reverted back. Ex.D2 clearly shows that the plaintiff was promoted provisionally for further period of

three months and as per Ex.D2, was stopped to work as Mortar-mate and, thus, prayed for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Shama, for, the plaintiff was not reverted but given provisional promotion for a specific period and the same expired with the lapse of time. His posting/promotion was temporary. No evidence has been brought on record to show that any norms of promotion were followed or applied when the appellant-plaintiff was allowed to work as Mortar mate on provisional basis. Plaintiff also failed to prove that he was ever allowed regular promotion as Mortar mate. DW-1 stated that he was allowed to work as Work Charge Motor mate for a period of three months and the same was a provisional posting. DW-1 also stated that as there was no Mortar mate in the Division, as such no seniority list of Mortar mate was prepared, therefore, the plea of the plaintiff that he was senior to other persons, namely, Parmod Kumar, Karnail Singh and Satpal Singh is of no value. Moreover, as per the review policy of the Government, the services of the workers engaged for short duration, i.e., less than 240 days, can be terminated on completion of work. The plaintiff was also engaged only to complete the work and after completion of work, he was reverted back.

There is no dispute to the ratio decidendi culled out in the judgments cited supra, but the same are not applicable because the disputed involved in the present case is totally different. Here the plaintiff has not been ordered to be reverted but was given provisional promotion for a specific period. Even the appellant-plaintiff was reverted back in 1987, but the suit aforementioned was filed on 2.12.1994, i.e., after lapse of more than

seven years. No explanation has come forth in not approaching the Court within reasonable time.

For the reasons stated above, I am of the view that there is no illegality or perversity in the impugned judgments and decrees of the Courts below, which are based on appreciation of oral and documentary evidence. No ground for interference is made out, much less any substantial question of law arises. Resultantly, the appeal is dismissed.

May 10, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No