

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-3462-2013 (O&M)

Date of Decision:-16.03.2018.

Sheela Devi

.....Appellant

Versus

Meham Cooperative Sugar Mill Ltd. Meham and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Ravinder Malik, Advocate for the appellant.

Mr. S.K. Verma, Advocate for respondent Nos.1 to 3.

Mr. Manjeet Singh, Advocate for respondent No.4.

P.B. BAJANTHRI, J. (Oral)

Pursuant to the order dated 07.03.2018, Mr. Nirmal Nagar, HCS, Managing Director, Meham Sugar Mills, Rohtak is present in Court. He states that he has reported as Managing Director from 16.05.2017 so the issue relating to accommodating 4th respondent as a Daftri is not related to his period.

(2.) In the instant appeal, appellant has filed a suit before the Trial Court questioning the appointment of 4th respondent to the post of Daftri while she was working as a Cook on the ground that Daftri post is to be filled up only from the post of Peon like appellant who is working as a Peon. Trial Court decreed the suit in favour of the appellant. Decree was reversed by the Appellate Court. Hence, the present appeal.

(3.) Crux of the matter in the present appeal is whether the official respondents can accommodate a Cook as a Daftri or not? Method of recruitment to the post of Daftri item No.9 to the Annexure “A” of the rules called “*the Haryana Cooperative Societies Act, 1984 Rules*” (for short “the Rules, 1984”). Item No.9 relates to Daftri (clerical Grade-IV). Method of recruitment is by promotion only. Qualification is by promotion out of Peons who are matriculate. Undisputedly respondent No.4 is not a holder of the post of Peon, she was working as a Cook. Therefore, in terms of method of recruitment to the post of Daftri, 4th respondent is not qualified. It was pointed out that Rule 48 of the Rules, 1984 provides for relaxation of rules which reads as under:-

“48. Relaxation of the rules: Where the Managing Director is of the opinion that it is necessary or expedient to do so he may be, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons with the prior approval of Board of Directors and the Registrar.”

(4.) Perused the order of appointing 4th respondent to the post of Daftri. Authorities have not invoked Rule 48 for the reasons that they have not assigned the reasons since one of the condition for relaxation of rules is that recording of reasons in writing. Therefore, 4th respondent appointment to the post of Daftri would be contrary to both Annexure “A” of the Rules read with Rule 48.

(5.) Learned counsel for the respondents submitted that Cook post was surplus, therefore, in order to accommodate Cook, she has been accommodated against Daftri post. In the absence of amendment to the

Rules of recruitment and so also in not compliance to Rule 48 that too when the source cadre to Daftri is Peon and Peons are available for the purpose of promotion to the post of Daftri competent authority cannot ignore the method of recruitment so also eligible peons names. In view of these facts and circumstances decree passed by the Lower Court dated 10.06.2011 is upheld. Official respondents/competent authority is hereby directed to consider appellant's name for promotion to the post of Daftri in terms of the Rules, 1984 if she is otherwise eligible with reference to the prescription of matriculate qualification. Such a decision shall be taken by the competent authority within a period of 3 months from today. 4th respondent may be accommodated in any of the equivalent post, if the Cook posts are surplus. 4th respondent shall be adjusted to any other direct recruitment vacancy and her pay shall be protected against the Cook post from the date of declaring Cook post as surplus.

(6.) Petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

March 16, 2018.
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Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.