

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

RSA No.4398 of 2013 (O&M)

Date of Decision:08.01.2018

Banarsi Dass since deceased through his LRs ... Petitioner

Vs.

Principal, Vaish Technical Institute, District Rohtak and others

... Respondents

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

Present : Mr. Sandeep Singal, Advocate for the appellants.

Mr. M.K. Mittal, Advocate for respondents No.1 and 2.

P.B. BAJANTHRI J. (Oral)

Appellant is aggrieved by the order passed in Civil Suit No.96 of 2004/2008 and Civil Appeal No.164 of 9.4.2011.

Appellant's grievance is relating to Annexure P-1 dated 28.11.2002 and Annexure P-3 dated 3.9.2003 relating to crossing of efficiency bar and order of recovery. Appellant was initially appointed as a Lab Attendant on 15.1.1980 and his service were removed on 12.06.1980. Further, he was freshly appointed against a Class-IV vacancy on 03.07.1982. He was further promoted to the post of Lab Attendant on 12.11.1982. For the purpose of crossing efficiency bar, respondent-management were required to take note of Rule 4.8 of the Punjab Civil Services Rules Vol.I Part-I. They have ignored relevant rules while passing Annexures P-1 and P-3. Thus, the appellant filed a suit before the court below. Both the courts below have rejected the appellant's suit as well as appeal on the ground that appellant was required to fulfill requisite conditions imposed in the Haryana State Technical Education Department

Field Staff (Group D) Service Rules 1996 notified on 4.10.1996 (for short

“1996 Rules”) read with the fact that appellant was dismissed from service on 24.5.2004. Thus, the appellant is aggrieved by the order passed in suit as well as appeal. Hence, the present petition.

Learned counsel for the appellant submitted that for the purpose of crossing of efficiency bar benefit to the appellant, respondent-management were required to take into consideration Rule 4.8 of the Punjab Civil Services Rules Vol.I Part-I and they cannot rely on 1996 Rules. The court below have wrongly taken note 1996 Rules as well dismissal from service on 24.5.2004. Thus, both the court below have erred in rejecting the appellant's claim.

Per contra, learned counsel for the respondents submitted that crossing of efficiency bar insofar as appellant is concerned was required to be taken in the year 1994. Therefore, management have rightly taken a decision vide Annexure P-1 dated 28.11.2002 and Annexure P-3 dated 3.9.2003, even though, Labour Court has relied on 1996 Rules read with the order of dismissal of the appellant. Appellant is entitled to crossing of efficiency bar prior to 1994.

Heard learned counsel for the parties.

Substantial question of law in the present appeal is whether the appellant is entitled to crossing of efficiency bar under the Punjab Civil Services Rules Vol.I Part-I or with reference to 1996 Rules issued on 4.10.1996.

Having regard to the service particulars of the appellant that he was re-appointed against class-IV post on 3.7.1982 and he was promoted to the post of Lab Attendant on 12.11.1982. He is entitled for consideration of his name for crossing of efficiency bar. Assuming that crossing of efficiency

bar is taken into consideration in the year 1984, even then, whatever the rules were required to be taken into consideration for the purpose of crossing of efficiency bar would be only the Punjab Civil Services Rules Vol. Part-I for the reasons that 1996 rules were came into force only from the date of gazette notification only in the year 1996. Perusal of the 1996 Rules, it is evident that it is prospectively. Consequently, any reliance on 1996 Rules would be redundant for the purpose of considering the appellant's grievance relating to crossing of efficiency bar. That apart court below erred in taking into consideration the fact that appellant was dismissed from service on 24.5.2004. Further it is to be noted that dismissal order of the appellant dated 24.5.2004 has been set aside vide order of even date passed in CWP No.26922 of 2015.

Accordingly, orders passed by the courts below dated 1.3.2011 and 12.7.2013 are set aside. Regular Second Appeal stands allowed. Appellant is entitled to the benefit of crossing of efficiency bar with reference to Punjab Civil Services Rules Vol-I Part-I and not with reference to 1996 Rules. Since legal representatives of the appellant are on record, therefore, management are hereby directed to extent the benefit of crossing of efficiency bar to the deceased employee from the date it was due to him and extend the monetary benefit to the legal heirs along with interest @ 6% p.a. from the date of due till disbursal within a period of six months from today.

08.01.2018

rajeev

Whether speaking/reasoned**Yes/No****(P.B. Bajanthri)**
Judge**Whether reportable****Yes/No**