

RSA-343-2019 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-343-2019 (O&M)

Date of Decision: 31ST January, 2019

Pardeep Kumar

...Appellant

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Ms. Alka Chatrath, Advocate,
for the applicant/appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-738-C-2019

Prayer in this application is for condonation of delay of 405 days in re-filing the appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit of counsel for the applicant-appellant, delay of 405 days in re-filing the appeal stands condoned.

Application stands allowed.

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Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Senior Division), Mansa, dated 08.11.2016, whereby, suit for declaration to the effect that the appellant – plaintiff is entitled for promotion to the post of Master under the handicapped (Ortho) category

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with mandatory injunction to the respondents to grant him appointment as well as all consequential benefits, stands dismissed, appeal against which, preferred by the appellant – plaintiff also stands dismissed by the Additional District Judge, Mansa, vide judgment dated 27.02.2017.

It is the contention of the learned counsel for the appellant that the Courts below have not appreciated that at the time of consideration for promotion of the candidates to the post of Masters/Mistresses cadre, appellant was eligible as per the instructions dated 26.01.2001 and 02.05.2003. The said instructions have been withdrawn only on 06.03.2014 but prior thereto, the promotions have been given effect to and therefore, rejection of the claim of the appellant is not sustainable. She, therefore, contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

I have considered the submissions made by the learned counsel for the appellant and with her assistance have gone through the impugned judgments.

It is an admitted position that the appellant was appointed as Senior Laboratory Attendant on 27.11.2008. The probation period of two years expired on 27.11.2010. The applications for consideration of promotion were invited on 28.03.2013 from the non-teaching staff working in the Education Department for promotion to the post of Masters/Mistresses. Appellant, in pursuance to the said letter dated 28.03.2013, submitted his application for promotion as he was eligible for consideration for promotion in the light of the instructions dated 26.01.2001

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and 02.05.2003. Promotions were granted to many employees but the claim of the appellant was not considered. It is, under these circumstances, the appellant had approached the Court by filing civil suit putting forth his claim.

The stand of the respondent – Department was that the instructions, on the basis of which, the appellant had put forth his claim i.e. instructions dated 26.01.2001 and 02.05.2003 were found contradictory to the law laid down in the judgment dated 21.03.1996 passed by this Court in CWP No.4208 of 1996, titled as 'Gurdip Singh Gill Vs. State of Punjab & others'. The said instructions, in pursuance to this fact having come to the notice of the respondent – Department, had been withdrawn on 06.03.2014.

The claim of the appellant, admittedly, based upon the instructions dated 26.01.2001 and 02.05.2003, which instructions were contrary to the judgment passed by this Court as this Court has specifically held that a class-IV employee cannot be considered for promotion to every post of class-III category as per the statutory rules. Instructions being contrary to the rules could not have been relied upon to grant the appellant the benefit of promotion to the post of Master. Merely because the instructions have been withdrawn subsequent to the cases of promotion having been considered and eligible persons promoted, would not confer any right upon the appellant in the light of the fact that those instructions were contrary to the judgment of this Court. The Courts below taking this aspect into consideration have proceeded to decline the declaration as well as injunction as prayed for by the appellant.

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There is no illegality in the judgments passed by the Courts below which would call for interference by this Court in the present appeal and therefore, the same stands dismissed.

31ST January, 2019
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

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