

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

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RSA-2084-2017

Date of decision: 05.02.2019

PAWAN KUMAR

...APPELLANT

VS.

STATE OF HARYANA AND ANOTHER

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Jatin Hans, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 01.10.2016 passed by the learned Lower Appellate Court whereby the appeal preferred by the respondents-defendants against the judgment and decree passed by the Civil Judge (Junior Division), Bhiwani dated 18.12.2013 whereby the suit of the appellant-plaintiff for declaration to the effect that he is entitled to promotion as Multipurpose Health Worker (hereinafter referred to as 'MPHW') from the year 2002 when he passed his matriculation examination and became eligible for consideration as per the Rules which were applicable prior to coming into force of the Haryana Health Department Multi-Purpose Health Supervisors and Multipurpose Health Workers Group 'C' Service Rules, 1984 (hereinafter referred to as '1984 Rules') as the said Rules are not applicable to the appellant-plaintiff as he had joined service on 19.04.1978 on regular basis as a Field Worker (Urban Malaria Scheme), which was decreed along with an injunction for

disbursement of all the benefits from the year 2009.

It is the contention of the learned counsel for the appellant that the appellant-plaintiff filed a suit for declaration to the effect that he is entitled to promotion as a MPHWS from the date he obtained the qualification of matriculation i.e. in the year 2002 with a further prayer for grant of mandatory injunction for consequential benefits in pursuance to the said promotion. The said suit was decreed by the learned Civil Judge (Junior Division) Bhiwani vide judgment and decree dated 18.12.2013 to the extent that the appellant was held entitled to promotion to the post of MPHWS w.e.f. 06.02.2009 with a direction to release the arrears of the appellant-plaintiff for the last 38 months with interest @6% per annum with a further decree that the arrears would only be paid w.e.f. 06.02.2009 and the interest would operate from the said date till its realization. He contends that the judgment and decree was fully justified on the basis of the evidence and the Statutory Rules. The appellant-plaintiff was entitled to promotion to the post of MPHWS as per the Rules prevalent at the time of his appointment, which did not mandate the training course of MPHWS from an institute approved by the Government. This qualification was added in the 1984 Rules which came into effect from 28.12.1984. The said Rules would not be applicable to the claim of the appellant-plaintiff and the trial Court has rightly observed so especially in the light of the admission made by Prem Kumar DW-1 and Dr. Ishwar Singh DW-2, who have categorically admitted that the persons, who had been appointed prior to coming into force of 1984 Rules, would not be required to pass the training course of MPHWS from an institute approved by the Government. He, thus, contends that the judgment and decree passed by the trial Court deserved to be upheld

by the Appellate Court and the Appellate Court has proceeded on a wrong assumption that the 1984 Rules would be applicable to the case of the appellant for his promotion to the post of MPH.W. He further contends that the Rules are silent with regard to the factum as to whether these Rules would be applicable to the employees who have been appointed prior or subsequent to the coming into force of the 1984 Rules. He, thus, contends that the judgment and decree passed by the Appellate Court dated 01.10.2016 cannot sustain and deserves to be set aside.

I have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the impugned judgment and decree passed by the Lower Appellate Court.

It is an admitted position that even as per the Rules, which would be applicable to the case of the appellant when he joined the service, mandated qualifications of matriculation with Hindi. The appellant-plaintiff, admittedly, did not possess the said qualifications of matriculation till the coming into force of the 1984 Rules. He passed his matriculation examination in the year 2002 and it is from that date that he had put forth his claim for promotion to the post of MPH.W. It is also not in dispute, rather admitted, that the appellant-plaintiff is not eligible for promotion to the post of MPH.W as per the 1984 Rules as he has not undergone the MPH.W Training Course from an institute approved by the Government. The fact is also not in dispute that the 1984 Rules are silent with regard to the applicability of these Rules and it does not distinguish between the employees who have been appointed prior to coming into force of these Rules or those who have joined service subsequent to the coming into force of the said Rules. The fact remains that even as per the Rules, which were

applicable at the time of appointment of the appellant-plaintiff, the appellant did not fulfil the requisite qualifications for promotion to the post of MPHW. Even on the date of coming into force of the 1984 Rules i.e. 28.12.1984, the appellant-plaintiff did not have the qualifications for promotion to the post of MPHW as per the old Rules. Admittedly, the 1984 Rules having coming into operation applies to the cadre as such and the Rules being silent with regard to the applicability or otherwise of these 1984 Rules to the employees, who have been appointed prior or subsequent to the coming into force of these Rules, would be applicable to all the employees who were in service on the coming into force of the said Rules. The appellant-plaintiff, therefore, would be governed by the 1984 Rules for all intents and purposes from the date of coming into force of the said Rules. No right has been conferred on the appellant-plaintiff as per the old Rules that he was not eligible for promotion and, therefore, he cannot claim that the old Rules would be applicable especially when there is no provision under the 1984 Rules which would make the applicability or otherwise of the said Rules to the employees who have been appointed prior to coming into force of the 1984 Rules. The appellant-plaintiff became eligible for appointment as per the old Rules also admittedly, in the year 2002 and on the said date, applicable Rules were the 1984 Rules which mandated consideration for promotion for a person who had undergone MPHW Training Course from an institute approved by the Government. The appellant-plaintiff having not undergone the same was not eligible for promotion. The judgment and decree, therefore, as passed by the District Judge, Bhiwani dated 01.10.2016 being in accordance with the Statutory Rules cannot be faulted with.

The contention of the counsel for the appellant-plaintiff that there is an admission on the part of the two witnesses of the respondents, namely, Prem Kumar DW-1 and Dr. Ishwar Singh DW-2 and, therefore, the appellant-plaintiff is entitled to promotion, cannot be accepted in the light of the principle that an admission, which is contrary to the Statutory Rules, would not bind the said party by such admission. Here the admission, if any, on the part of these witnesses being contrary to the Statutory Rules, cannot be made the basis for conferring an illegal right upon an employee who is not entitled to the same as per the Statutory Rules.

In view of the above, finding no merit in the present appeal, the same stands dismissed.

February 05, 2019

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No