

**C.M. NO.6472-C OF 2019 &
R.S.A. NO.2281 OF 2017**

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

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**C.M. NO.6472-C OF 2019 &
R.S.A. NO.2281 OF 2017
DATE OF DECISION: MAY 08, 2019**

Maha Singh

.....Appellant

VERSUS

D.H.B.V.N.L., Hisar and another

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vivek Khatri, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No.6472-C of 2019

Application is allowed as prayed for subject to all just exceptions.

Comparative chart of pay scales, which is annexed as Annexure A-1 with the application, is taken on record. Exemption is also granted from filing certified/more legible vernacular of said document.

R.S.A. No.2281 of 2017

Challenge in this appeal is to the judgment and decree passed by the Civil Judge Junior Division, Hisar, dated 02.12.2013 whereby the suit for declaration filed by the appellant-plaintiff to the effect that he is entitled to pay, pension and other benefits alongwith interest @ 12% per annum on the amount due from the respondent-defendants on the basis of he

being senior to one Ved Parkash, Lineman, who was junior to the appellant in the seniority list, which was prepared on 24.01.1986 wherein the appellant was shown to be at Sr.No.124 whereas Ved Parkash was placed at Sr.No.154, has been dismissed, appeal against which preferred by the appellant-plaintiff has been dismissed by the District Judge, Hisar, on 16.12.2016.

It is the contention of learned counsel for the appellant that the appellant was appointed as a Assistant Lineman on 27.10.1972. Ved Parkash joined Hisar Circle as Assistant Lineman on 04.11.1972 and keeping in view this fact in the seniority list, which was prepared by the respondents, since Ved Parkash had joined the said circle subsequent to the appointment of the appellant, he was shown junior to the appellant-plaintiff. He contends that the plaintiff was kept at Sr.No.124 whereas Ved Parkash was placed at Sr.No.154 in the seniority list dated 24.01.1986, Ex.P1, which has been wrongly changed by the respondents on a representation submitted by Ved Parkash vide order dated 15.01.1992, Ex.D4, showing him senior to the appellant-plaintiff. This, the counsel contends, is violative of the principle that a person who is transferred from a different circle has to be placed at the tail end of the seniority list on the date of his joining. Since the appellant-plaintiff had been appointed in Hisar Circle prior to Ved Parkash, he was required to be shown senior to Ved Parkash, which was rightly so done in the seniority list dated 24.01.1986. His further contention is that the seniority, which has been granted to Ved Parkash vide order dated 15.01.1992, ExD4, is with effect from 01.01.1986 and on the said date policy dated 06.07.1982, Ex.P9, was in force, according to which the seniority had to be assigned at the tail end of the said circle. The Courts

below have failed to appreciate this fact and, therefore, the impugned judgments cannot sustain and deserve to be set-aside.

I have given my thoughtful consideration to the submissions made by learned counsel for the appellant and with his assistance have gone through the impugned judgments.

Briefly, the facts are that the appellant-plaintiff was appointed as a Assistant Lineman in the Haryana State Electricity Board, Hisar Circle on 27.10.1992. On the other hand, Ved Parkash was appointed as an Assistant Lineman in Haryana State Electricity Board, Delhi Circle on 23.08.1971. He was transferred to Hisar circle and joined as such on 04.11.1972. In case the policy dated 06.07.1982 Ex.P9 was to be made applicable retrospectively, Ved Parkash would have been shown junior to the appellant-plaintiff. However, there is nothing mentioned with regard to the retrospective applicability of the said policy. If that be so, the policy has to be given effect prospectively, meaning thereby the said policy would affect the employees who are transferred and joined a particular circle after that particular date his seniority has to be maintained at the tail end of the particular circle, where he has been transferred and there initial appointment date would become irrelevant for said purpose. But in the present case it is an admitted position that Ved Parkash was appointed prior to the appellant-plaintiff and, therefore, if the initial date of appointment is taken for determination of the seniority on the basis of length of service, Ved Parkash would grade senior to the appellant-plaintiff. It is also not in dispute that Ved Parkash joined Hisar circle on 04.11.1972. On the said date, the policy dated 06.07.1982, Ex.P9, could not have been made applicable as it does not have any retrospective effect. The benefit of length of service, which he had

earned in Delhi circle cannot be denied to Ved Parkash and, therefore, on a representation, which he had submitted, the respondents have rightly proceeded vide order dated 15.01.1992, Ex.D4 to grant seniority to Ved Parkash over and above the appellant-plaintiff. The same position would be applicable as regards policy dated 25.08.1987, Ex.P8, which also has not been shown to have retrospective effect and, therefore, would be prospective in operation.

It may be added here that the order dated 15.01.1992, Ex.P4, vide which Ved Parkash has been granted seniority over and above the appellant-plaintiff has not been challenged by the plaintiff-appellant in the suit in any other forum. If that be so, the claim of seniority as also the consequential benefits in pursuance thereof over and above Ved Parkash cannot be granted to him.

The findings, therefore, as recorded by the courts below cannot be faulted with as the same are based on proper appreciation of the pleadings and evidence on record as also the regulations and the policies.

In view of the above and keeping in view the fact that there are concurrent findings recorded by the Courts below, there is no question of law involved in the present appeal. Therefore, the present appeal, being devoid of merit, is dismissed.

May 08, 2019
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE

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