

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

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Regular Second Appeal No.2244 of 2018
Date of Decision: November 5th, 2019

Krishan

...Appellant

Versus

The Rohtak Co-operative Sugar Mills Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Mahavir Singh, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 24.08.2015 passed by the Civil Judge (Senior Division), Rohtak, whereby the suit for declaration preferred by the appellant-plaintiff for grant of the same pay scale as that of his junior Madan Mohan, stands declined, appeal against which preferred by the appellant-plaintiff has also been dismissed by the learned Additional District Judge, Rohtak, vide judgment dated 20.07.2017.

2. It is the contention of learned counsel for the appellant that the appellant had joined the services of the respondent-The Haryana Co-operative Sugar Mills Limited much prior to the date of appointment of Madan Mohan. He contends that the appellant as well as Madan Mohan are holding the post of Power Turbine/DG Set Attendants. These two posts are equivalent and, therefore, the appellant-plaintiff is entitled to the pay scale equal to that of his junior. He contends that the Courts below have failed to appreciate this aspect that over a period of time, appellant has gained experience of the post and, therefore, cannot be declined the benefit of ACP grade merely because he does not possess the ITI qualification. In support

Court in *Sham Singh and others Versus State of Punjab and others 2000 (2) SCT 279*. Reliance has also been placed upon the Division Bench judgment of this Court in *Ajit Kumar Jain Versus State of Punjab and another 1992 (1) SCT 365*. He on this basis contends that because of the experience he had gained over a period of time, he would be entitled to the higher pay scale equivalent to that of Madan Mohan, who admittedly is junior to the appellant and is holding an equivalent post. Assertion has, therefore, been made that the judgments and decree as passed by the Courts below cannot sustain and deserve to be set aside.

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

4. The basic contention which has been raised by learned counsel for the appellant is that irrespective of the nature of post held by the person, if he is performing similar duties, he would be entitled to the same pay scale as his junior. This principle cannot be disputed and that is primarily what has been held by the Full Bench judgment of this Court in *Sham Singh and others Versus State of Punjab and others as also in Ajit Kumar Jain Versus State of Punjab and another supra*. The present is a case where there is no dispute that the appellant-plaintiff is getting the pay scale of the post on which he is working which is identical to that of the post held by Madan Mohan. The claim, however, in the present suit is with regard to grant of ACP which has been granted to Madan Mohan. As per the ACP rules, a person after a certain period of time of service on a post, when not granted any promotion during that said period, would be entitled to the higher pay scale of the post as specified in the statutory rules governing the

ACP grade provided he fulfills the minimum required qualification for the promotional post. There is no dispute with regard to the fact that the appellant-plaintiff does not possess ITI qualification. This qualification of ITI is mandated and prescribed for promotion to the post, on which he is putting forth his claim on the basis of the ACP grade. Since the appellant-plaintiff does not possess the minimum required qualifications for the promotional post, he would not be entitled to the grant of ACP scale which has been granted to Madan Mohan, who possesses ITI qualification.

5. The experience which the appellant-plaintiff would have gained over a period of time does not in itself entitles him to the promotion to the higher post when he does not fulfill the statutorily fixed qualifications. There is no dispute that the appellant-plaintiff is getting the pay scale of the post on which he is performing his duties but as he does not fulfill the qualification for the grant of ACP scale of the next promotional post, he would not be entitled to the same. The claim of the appellant-plaintiff vis-a-vis Madan Mohan, therefore, cannot be said to be identical nor they can be said to be similarly placed and thus the said benefit cannot be granted to him. The Courts below have rightly proceeded to deny him the said benefit and dismissed the suit which has been preferred by him.

6. It may be pointed out here that as per the findings recorded by the Courts below, there is a distinction with regard to the initial appointment of the appellant-plaintiff vis-a-vis Madan Mohan. Appellant was appointed as an unskilled daily wage worker, whereas Madan Mohan was appointed to the post of Diesel Generator Attendant. The post which is being held by the appellant-plaintiff belongs to a semi-skilled employee category, whereas that of Madan Mohan is of the skilled category which is based upon the

factum of he having possessing the qualification of ITI in Diesel Engine Trade.

7. The judgments and decree as passed by the Courts below thus cannot be faulted with as they are based upon proper appreciation of the pleadings and evidence on record apart from the aspect of the requirement of the ACP scale grade pay.

8. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

9. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

November 5th, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes