

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(208)

CM-10061-C-2019 in/and
RSA-3703-2019
Date of Decision : 09.12.2020

PARLADH RAI

...Appellant

Versus

THE PUNJAB STATE CO-OPERATIVE BANK LTD. AND ORS

...Respondents

(through video conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Aman Dhir, Advocate for the appellant.

Harsimran Singh Sethi J. (Oral)

CM-10061-C-2019

The present application has been filed seeking condonation of delay of 47 days in re-filing the appeal.

In view of the facts as mentioned in the application, which are duly supported by an affidavit, the application is allowed and delay of 47 days in re-filing the appeal is condoned.

RSA-3703-2019

The present appeal has been filed against the con-current findings recorded by the Courts below, wherein, the suit filed by the plaintiff for declaration that the order dated 23.06.2009, by which the persons juniors to the appellant were promoted, to be declared illegal, has

been dismissed.

Suit filed by the appellant/plaintiff has been dismissed on the ground that the order of promotion dated 23.06.2009 was passed on the basis of Resolution No. 27 dated 27.02.2009 and the said Resolution, rather than being challenged, has not been proved or even appended by the appellant/plaintiff before the Court, despite various opportunities available to him. The Courts below have held that in the absence of the said Resolution, the validity of the order dated 23.06.2009 cannot be ascertained and the declaration being sought by the appellant/plaintiff that the promotion of his juniors effected vide order dated 23.06.2009, be declared illegal, cannot be granted.

Learned counsel appearing on behalf of the appellant submits that as the existence of Resolution No. 27 dated 27.02.2009 is not denied by the respondents hence, challenging the said Resolution or placing of the same on record, cannot be a ground to refer the declaration qua the validity of the promotions, which was ordered by the respondent-bank on 23.06.2009, by which the juniors to the appellant/plaintiff were promoted.

I have heard learned counsel for the appellant and have gone through the record with his able assistance.

Once, the order dated 23.06.2009, which is being sought to be declared as illegal, is based upon the Resolution No. 27 dated 27.02.2009, it is the duty of the appellant/plaintiff to place on record the same to show that either the order dated 23.06.2009 is contrary to the Resolution No. 27 dated 27.02.2009 or the said Resolution was bad in law. In the absence of the said Resolution No. 27 dated 27.02.2009 on record, which was the basis of the issuance of the order of promotion dated 23.06.2009, effecting the

promotion of the juniors of the appellant/plaintiff, the Courts below have rightly rejected the prayer of the petitioner for declaration qua the validity of the promotion of his juniors vide order dated 23.06.2009. Further, once the order dated 23.06.2009 sought to be declared illegal, is based upon the Resolution No. 27 dated 27.02.2009, appellant/plaintiff should have challenged the same if he was aggrieved by the said Resolution in any manner. In the absence of any challenge to the Resolution No. 27 dated 27.02.2009, the order dated 23.06.2009 cannot be declared illegal in isolation as the said order dated 27.02.2009 is a consequential order of the Resolution No. 27 dated 27.02.2009.

As far as the contention being raised on behalf of the appellant/plaintiff that the existence of Resolution No. 27 dated 27.02.2009 has not been denied by the respondents and, therefore, it was the duty of the respondent-bank to place on record the said Resolution, the same is fallacious. It is the appellant/plaintiff, who has to stand on his own legs to prove that the order dated 23.06.2009, which is based upon the Resolution No. 27 dated 27.02.2009, is illegal or arbitrary. Onus to prove the assertion, as raised in the present suit, is upon the appellant/plaintiff. In the present case, the appellant/plaintiff has not challenged and also failed to place on record the basic Resolution No. 27 dated 27.02.2009, which was the basis of the order dated 23.06.2009 so as to adjudge the validity of the said promotion order, the declaration of which to be illegal was being sought. It was the duty of the plaintiff to prove that the promotion order dated 23.06.2009 was bad in law by placing on record the basis of the said order i.e. Resolution No. 27 dated 27.02.2009, which is admittedly missing in the present case. Hence, once the appellant/plaintiff failed to bring on record

the required material to adjudge the legality of the order dated 23.06.2009, no ground can be raised by him when the prayer of the appellant/plaintiff for declaring the order dated 23.06.2009 as illegal, has been declined.

Further, learned counsel appearing on behalf of the appellant/plaintiff submits that as per the order dated 23.06.2009, 95 employees were granted promotion. The said order has been placed on record of this RSA as Annexure-A1. Learned counsel for the appellant/plaintiff concedes that in case the said order was to be declared illegal, the employees, who were promoted by the said order, who the appellant/plaintiff claim to be his juniors, would have been directly effected by the same, are not party to the suit. In the absence of the proper parties also, the validity of the order dated 23.06.2009 could not have been decided by the trial Court even otherwise.

No perversity has been pointed out by the learned counsel for the appellant in the orders passed by the Civil Judge (Sr. Divn.), Faridkot dated 23.03.2018 and with that of the order dated 28.08.2018 passed by the lower Appellate Court, keeping in view the evidence on record. In the absence of any perversity, no interference is called for by this Court.

Keeping in view above, no question of law arises for determination in the present appeal.

The appeal is accordingly dismissed.

December 09, 2020
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No