

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

RSA-3209-1997 (O&M)

Date of decision: 09.02.2022

State of Punjab

.....Appellant

versus

Santokh Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Ms. Anju Sharma Kaushik, DAG, Punjab
for the appellant-State.

Mr. P.S. Jammu, Advocate
for the respondent.

FATEH DEEP SINGH, J.

The State of Punjab has come up in this 2nd regular appeal when initially the suit of the then, plaintiff-Santokh Singh, was decreed by the Court of the learned Additional Civil Judge (Senior Division), Baba Bakala (Amritsar) on 08.06.1996 and, thereafter, the appeal of the State too met its nemesis vide impugned judgment/decreed dated 07.05.1997 passed by the Court of the learned Additional District Judge, Amritsar.

Heard counsel for the parties and perused the records.

The plaintiff-Santokh Singh is from scheduled caste

category and was earlier employed as a sepoy in the Indian Army and joined the office of Civil Surgeon, Amritsar as Store Keeper-cum-Clerk on 27.03.1980. Prior thereto, the plaintiff claims to have served in the Armed Forces from 09.10.1969 to 31.12.1977 as a Store Keeper. It is on the averments that benefit of the military service for counting his military service towards civil pension under Rule 4.3 (1), Rule 4.6 (A) and (V) of the Punjab Civil Service Rules, Volume II and, therefore, was entitled to consequent promotion, seniority and pay fixation from that day. He joined the Army on 09.10.1969 and, therefore, claimed re-fixation of his pay and service benefits. It is also the claim that the plaintiff is a demobilized Armed Forces Personnel for which reservation of personnel have been provided in the Punjab State Non-Technical Service Rules, 1976. His credentials are further enlightened on account of his participation in the Indo-Pak War in the year 1971 and even claimed entitlement to increments on that score as well.

The defendants in their written statement besides usual preliminary injunctions of suit being not maintainable and that the plaintiff was recruited on the recommendation of the Subordinate Services Selection Board against posts reserved for Scheduled Caste and not for ex-servicemen and so as such, he is not entitled

to benefits of military services towards civil seniority, promotion and pension and sought dismissal of the suit. The Trial Court framed the following issues:-

1. Whether a legal and valid notice under Section 80 CPC was served upon the defendants before filing the suit. If not to what effect? OPP.
2. Whether the suit is not maintainable? OPD.
3. Whether the plaintiff is entitled to the declaration prayed for? OPP.
4. Relief.

The plaintiff examined himself as PW-1, whereas, defendants examined one, Balwinder Singh, Senior Assistant, PSC Baba Bakala as DW-1. It is consequent thereupon, the impugned findings were returned by the different Courts as detailed above.

In view of the recent pronouncement in 'Kirodi (since deceased) through his LR vs. Ram Parkash and others' Civil appeal No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019, the Hon'ble Supreme Court has clearly held under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana, that there is no necessity of framing substantial question of law for disposal of an appeal.

From the own stand of the appellant/defendant-

Department, they do not deny the fact as to the plaintiff having worked in the Indian Army during 1971 War as well as having been demobilized Army personnel belonging to Scheduled Caste category. In the impugned findings, the learned First Appellate Court has well thrashed out that if the plaintiff is entitled to claim twin benefits, one on account of being ex-servicemen and other being belonging to Scheduled Caste and it was concluded that since the selection of the plaintiff was under General Category candidate on a post reserved for Ex-Servicemen and has rightly concluded that by virtue of notification of the State dated 07.05.1976, a demobilized Armed Forces Personnel is entitled to seniority and pay which is to be taken on the assumption that he joined the service of the State Government at the first opportunity he had after joining the military service.

The learned State counsel could not convince this Court how the observations in the impugned findings that the plaintiff was entitled to the benefits admissible to a demobilized Armed Forces Personnel in the category of Ex-Servicemen and such an opportunity cannot be denied to him and so its benefits purely on the premise as has sought to be argued by the learned State counsel that the plaintiff too had applied under the Scheduled Caste

category while filling his candidature for the post of Clerk-cum-Store Keeper in the civil job.

The learned Trial Court and so the First Appellate Court had correctly appreciated the evidence on the record and their findings on issue No.3 as to the entitlement to declaration of the plaintiff cannot be find fault with. Thus, in light of foregoing discussions, the counsel for the appellant could not convince this Court how there has been illegality in the findings under assail, the appeal of the appellant being hopelessly without merits stands dismissed.

09.02.2022

Neha

**(FATEH DEEP SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No