

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

RSA No.3913 of 2005 (O&M)

Date of decision: 18th February, 2022

The Punjab State & others

... Appellants

Versus

Surinder Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Ms. Anju Sharma Kaushik, Dy. Advocate General, Punjab
for the appellants/State.

Mr. Arun Singla, Advocate for the respondent.

FATEH DEEP SINGH, J.

The appellant Punjab State has come up in this regular second appeal against judgment and decree dated 11.08.2005 of the Court of learned Additional District Judge, Mansa whereby the Court below has upheld the judgment and decree dated 18.01.2005 of the Court of learned Civil Judge (Junior Division), Mansa decreeing the suit of then plaintiff Surinder Kumar (now respondent) thereby dismissing the appeal of the State.

Heard Ms. Anju Sharma Kaushik, Dy. Advocate General, Punjab for the appellants/State; Mr. Arun Singla, Advocate for the respondent and perused the records of the case.

Admittedly the plaintiff was appointed as a Tracer (also termed as Junior Draftsman) in the department of the defendants where

he joined on 19.04.1977 and was confirmed on 17.01.1991. As is the stand of the two sides in the submissions, Punjab Civil Service Rules are applicable to the case of the plaintiff. As per the seniority list, since Tracer throughout the State constitute a single cadre and the plaintiff was allotted seniority at serial number 75. The main grouse of the plaintiff respondent is that one Goverdhan Lal who was at serial number 77 of the seniority list was promoted to the post of Draftsman which is a promotional post. The plaintiff claims that he is holding a degree of BA and diploma in ITI and therefore, fulfills the qualification and experience for the post of Draftsman, and that Tracers were to be promoted against the post of Draftsman in the ratio of 75:25. Defendant No.4 Jaswinder Singh who was at serial No.76 in the common seniority list of Tracers on the basis of a civil suit No.58 of 06.02.1987 claimed promotion and though his civil suit was dismissed vide judgment and decree dated 24.10.1989 but his appeal was allowed by the learned Additional District Judge vide judgment and decree dated 18.05.1990 and as a consequence of which the authorities promoted him with effect from 12.10.1983 by virtue of the judgment which was never put to challenge.

The main claim of the defendants is that under the Punjab Subordinate Agricultural Rules 1933 there is no provision for promotion from the post of Tracer to that of Draftsman and claimed that Goverdhan

Lal was in fact not promoted as a Draftsman but was selected so and therefore, sought to refute the claim of the plaintiff.

The trial Court framed the following issues:-

1. Whether the plaintiff is entitled to be considered for promotion w.e.f. 12.10.83? OPP
2. Whether action of the department for not considering the plaintiff for promotion from tracer to draughtsman w.e.f. is illegal, null and void? OPP
3. Whether plaintiff is entitled to relief for mandatory injunction for promotion of plaintiff from tracer to draughtsman w.e.f. 12.10.83 and along with consequential benefits with interest at the rate of 18%? OPP
4. Whether suit of the plaintiff is within limitation period? OPP
5. Whether suit of the plaintiff is not maintainable in the present form? OPD
6. Whether suit of the plaintiff is bad for non-joinder of necessary parties? OPD
7. Relief.

Plaintiff testified himself as PW1 and tendered into evidence documents Ex.P1 to Ex.P23. On the other hand, defendants examined Mohinder Pal Singla, Divisional Soil Conservation Officer, Mansa as DW1 and closed the evidence. It is as a consequence of the same, the impugned findings were returned by the two courts below.

In view of the recent pronouncement in **‘Kirodi (since deceased) through his LR vs. Ram Parkash & 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.

Appreciating the submissions, it is sad to observe how and by what means a person at seniority number 75 was ignored and other persons at seniority number 77 and 76 were promoted over and above the plaintiff. The very cross-examination of the lone witness of the defendants DW1 Mohinder Pal Singla, Divisional Soil Conservation Officer, Mansa leaves no scope to doubt the high-handedness of the defendants in adopting the principle of pick-and-choose to give undue benefits to their blue-eyed employees and promoting them under the feigned garb of selection which is not established in the evidence on record. How and why the plaintiff was ignored without there being any

departmental action or order or any adverse entry against him, certainly puts the claim of the defendant/department under a cloud that all is not well with it. Learned trial Court in paragraph No.15 of the judgment and so the findings of learned first appellate Court in para No.25 had dealt at length this aspect of the matter and which findings need to be upheld being wholly and legally justified. There is no merit in the instant appeal which accordingly stands dismissed.

(FATEH DEEP SINGH)
JUDGE

February 18, 2022
rps

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