

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

RSA No.1122 of 2021 (O&M)
Date of decision : 19th September, 2022

Haryana Vidut Prasaran Nigam Ltd. & others

... Appellants

Versus

Kashi Ram & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Padamkant Dwivedi, Advocate for the appellants.

Mr. Sunil K. Nehra, Advocate for respondent No.1.

MANJARI NEHRU KAUL, J.

Suit for possession and mandatory injunction filed by the plaintiff was decreed by the trial Court vide judgment and decree dated 22.01.2016. The aforementioned judgment and decree was challenged before the first appellate Court by the defendants, which was dismissed on 06.03.2020. The defendants are now before this Court in Regular Second Appeal. The parties to the *lis* hereinafter shall be referred to by their original position in the suit.

Plaintiff filed a suit for declaration and mandatory injunction to the effect that order bearing Memo No.110/SEG-159 dated 08.03.2010 and office order bearing No.190/SEG-159 Vol.I dated 13.04.2010 vide which persons junior to him were promoted as Junior Engineers (J.E.), were illegal and void and thus, deserved to be set aside. Besides this, it was prayed by the plaintiff that he be granted the promotional benefits of Junior Engineer with effect from 08.03.2010

alongwith consequential benefit and interest @ 18 % p.a. from the date of accrual till payment. The pleaded case of the plaintiff was that he joined service in the Electricity Department, Haryana on 25.03.1979 as Station Attendant in the B.C. category. On 15.01.1998, he was promoted as SSA and his name figured at serial number 296 in the tentative revised seniority list of SSA allocated to HVPNL issued on 23.06.1996. The plaintiff retired from service on 31.03.2010 on attaining the age of superannuation. On 08.03.2010, an office Memo was issued by HVPNL, vide which some candidates were promoted to the post of Junior Engineer, Sub-Station, however the name of the plaintiff did not figure in the said list even though persons junior to him i.e. defendants No.7 to 10 were promoted. The plaintiff alleged that defendants No.7 to 10 had been promoted as Junior Engineers on the basis of fabrication and manipulation in as much as their dates of promotion as SSA had been shown as 01.06.1996, 11.09.1996, 24.09.1996 and 05.12.1997 respectively, whereas in reality, they had been promoted on 01.06.1998, 11.09.1998, 24.09.1998 and 05.12.1998 respectively. He claimed that it was in this background, defendants No.7 to 10 had been placed above the plaintiff in the tentative seniority list dated 30.06.1999. The plaintiff preferred a written representation dated 15.03.2010 to the concerned SE (Admn.II) against the aforementioned orders of promotion and was assured that the promotional order of the plaintiff would be issued shortly. Thereafter, a communiqué was issued to the concerned authorities for not allowing the persons junior to the plaintiff, to join on the promoted post. It was

averred by the plaintiff that defendants No.7 to 10 on account of the influence wielded by them had persuaded the authorities to prevaricate the matter till retirement of the plaintiff on 31.03.2010. Thereafter, the authorities issued another office order dated 13.04.2010, promoting 12 more persons to the post of J.E. including the defendants. It was alleged by the plaintiff that he had been intentionally ignored for the post of Junior Engineer Sub-Station even though the said post had fallen vacant while he was still in service. It was also averred that even though a legal notice dated 22.09.2011 had been sent by the plaintiff to the respondent Department to release the aforementioned benefits of plaintiff however, it was in vain. Hence, the present suit.

In their written statement, the defendants controverted the case of the plaintiff and submitted that the name of the plaintiff did not figure at serial number 296 but at serial number 316 instead in the seniority list for the period from 01.01.1998 to 30.06.1999. It was also pleaded that only candidates whose names figured at serial number 281 to 314 were promoted to the post of Junior Engineer Sub-Station vide order dated 08.03.2010 and defendants No.7 to 10 were placed at serial numbers 298, 303, 304 and 314 respectively. However, subsequently defendants No.8 and 9 were reverted to the post of GSO(SSA) due to the seniority list being revised vide memo No.Ch.64/EA-10 dated 28.01.2010 and thereafter, both defendants No.8 and 9 were placed at serial number 328 and 329A respectively. It was also submitted that defendants No.7 and 9 were already at serial numbers 298 and 314 and since the candidates only upto serial number 314 were considered for

promotion, the plaintiff's case was not considered as he was placed at serial number 316 in the seniority list and as a result he was not entitled to any consequential benefits. The defendants, however, admitted that 12 persons were promoted to the post of Junior Engineer vide order dated 13.04.2010 i.e. after the retirement of the plaintiff.

On the basis of material and other evidence led, the suit of the plaintiff was decreed by the Courts below. The Courts below noticed that the defendants No.8 and 9 were wrongly promoted in the first place which fact stood admitted by the defendant Department, owing to which they both were reverted to the post of GSO (SSA). The courts below further held that as per record, plaintiff was placed at serial number 316 in the seniority list and the promotions had been made till serial number 314, thus, if the defendants No.7 to 10 not been promoted wrongly earlier and seniority list adhered to, the plaintiff too would have been promoted. Lastly, the courts below held the plaintiff entitled to benefits prayed for including his promotion to the post of Junior Engineer Sub-Station from the date of promotion of his colleagues i.e. 08.03.2010.

Learned counsel for the appellants/defendants vehemently argued that the courts below while passing the impugned judgments and decrees failed to appreciate the cardinal principle of Service Law that promotion was not an inherent right and still further any grievance with respect to non-promotion should have been brought to the notice of the competent authority at the earliest. Learned counsel vehemently argued that the instant suit was filed beyond limitation period as the

plaintiff had failed to challenge the seniority list from 1999 to 2010. He further submitted that a manifest error in law had been committed in the impugned judgment, as the Courts had failed to appreciate that 12 persons who were promoted to the post of Junior Engineer Sub-Station vide order dated 13.04.2010, had been promoted after retirement of the plaintiff. Learned counsel urged that in the circumstances, the plaintiff could not be deemed to have been promoted to the post of Junior Engineer Sub-Station from the date of promotion of his colleagues on 08.03.2010.

Per contra, learned counsel appearing for the plaintiff/respondent vehemently opposed the submissions made by the counsel opposite and argued that had the candidates at serial numbers 303 and 304 in the seniority list defendants No.8 and 9 i.e. Nand Lal and Pawan Kumar Jain not been included, the plaintiff would have been promoted to the post of Junior Engineer prior to his retirement on 31.03.2010. Learned counsel while drawing attention of this Court to column No.7 of the seniority list Ex.P9, submitted that it was on account of an apparent mischief by the concerned Clerk, year of appointment of both Nand Lal and Pawan Kumar Jain had been mentioned as 1996 instead of 1998. It was further submitted that in the seniority list Ex.P9, the seniority of Nand Lal and Pawan Kumar Jain had been shown at serial number 303 and 304, due to the mentioning of wrong date of their promotion as 11.09.1996 and 24.09.1996 in place of 11.09.1998 and 24.09.1998 respectively. Though promotion of these candidates was withdrawn for the post of Junior Engineer, however,

surprisingly within one month i.e. April 2010 they were again rewarded with the promotion to the post of Junior Engineer. Learned counsel submitted that it was thus obvious that promotions of defendants No.8 and 9 were withdrawn only to delay the matter until after plaintiff's retirement and just to deprive the plaintiff of his promotion to the post of Junior Engineer.

I have heard learned counsel for the parties and perused the relevant material on record.

This Court does not find any error in the concurrent findings recorded by the courts below. The submission made by learned counsel for the appellants that the suit in question was barred by limitation, deserves to be rejected. No evidence was brought on record to prove that the seniority list prepared in the year 1999 had ever been circulated. Still further, the defendant Department was duty bound to prepare the list diligently. The contention of learned counsel for the appellants that the plaintiff had chosen to file the suit in question only after retirement, hence he could not be promoted, is also devoid of any merit. It is a matter of record and not disputed by the defendant Department that the plaintiff had made a representation to SE Admn.II, HVPNL Panchkula vide office Memo No.48/EA dated 15.03.2010. It was on the basis of this representation of the plaintiff that the promotion of the persons junior to him was withdrawn.

This Court concurs with the observations of the courts below and the submissions made by learned counsel for the plaintiff that had his lawful and legitimate claim of promotion not been ignored

and the defendants not been promoted on the basis of fraudulent, forged and fabricated record, the plaintiff would have also been promoted to the post of Junior Engineer Sub-Station on 08.03.2010 itself alongwith the other promoted persons. It is thus evident that promotion of the plaintiff could not take place on account of the act and conduct of the defendant Department.

On being pointedly asked, learned counsel for the appellants has been unable to bring to the notice of this Court any material on record from which it could be inferred that the conclusions drawn by both the courts below were either contrary to the record or suffered from any material illegality. This Court does not find any error in the concurrent findings recorded by the courts below as the same do not reflect any illegality or perversity. In the circumstances, the appeal being devoid of any merit stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

September 19, 2022

rps

Whether speaking/reasoned Yes/No

Whether reportable Yes/No