

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

RSA No.763 of 2018 (O&M)

Date of decision: 2nd February, 2022

Sarvjeet Singh

... Appellant

Versus

State of Haryana & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. B.S. Mittal, Advocate for the appellant.

Mr. S.S. Pannu, Dy. Advocate General, Haryana
for the respondents.

FATEH DEEP SINGH, J.

The matter has been taken up through video-conferencing on account of outbreak of pandemic COVID-19.

Initially Sarvjeet Singh plaintiff filed against State of Haryana and others a suit for declaration with consequential relief of mandatory injunction claiming that he was appointed as a Driver on 05.05.1986 in the pay-scale of ₹ 1200-2040 and since retired from Govt. service while serving at Sirsa Depot on 31.05.2009 after attaining the age of 58 years. It is claimed that being governed by the Haryana Civil Service Rules, upon revision of pay-scales of the Haryana Govt. employees with effect from 01.01.1996 he was placed in the pay-scale of ₹ 4000-6000 when ACP Rules were also introduced with effect from 01.01.1996 for the employees having completed ten years of regular satisfactory service. The main contention is that he is entitled to be placed

in first ACP scale of ₹ 5000-7850 with effect from 05.05.1996 and second ACP scale of ₹ 5450-8000 with effect from 05.05.2006 after completion of 20 years of regular satisfactory service. Having been denied the same, the appellant filed the suit in question.

The defendants appeared and contested the same on the grounds that the plaintiff had concealed material facts and was not entitled to any such relief and alleged that he has not completed ten years of regular satisfactory service as claimed by him nor completed twenty years of regular satisfactory service so pleaded in his plaint. It is alleged that the plaintiff was charge-sheeted and several adverse orders were passed against him.

The trial Court framed the following issues:-

1. Whether the plaintiff is entitled for the relief of declaration on the grounds mentioned in the plaint, as prayed for? OPP
2. Whether the plaintiff is entitled for relief of mandatory injunction as prayed for? OPP
3. Whether plaintiff has no cause of action to file the present suit? OPD
4. Whether suit of plaintiff is not maintainable? OPD
5. Whether the plaintiff is estopped to file the present suit by his own act and conduct? OPD

6. Whether the plaintiff has not come to the Court with clean hands and has suppressed the true and material facts from the Court? OPD

7. Relief.

The plaintiff examined himself as PW-1 and pressed his affidavit Ex.PW1/A followed by the testimony of DW1 Bhagmal, Assistant of the defendant through affidavit Ex.DW1/A and upon tendering of documents Ex.D1 to Ex.D56, closed the evidence. The Court of learned Addl. Civil Judge (Sr. Divn.), Sirsa vide judgment and decree dated 04.01.2013 dismissed the suit with no order as to costs. On appeal by the unsuccessful plaintiff, the Court of learned Addl. District Judge, Sirsa vide impugned judgment dated 14.12.2016 too dismissed the suit of the appellant plaintiff. That is how the present appeal has come about.

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.

Upon hearing Mr. B.S. Mittal, Advocate for the appellant; Mr. S.S. Pannu, Dy. Advocate General, Haryana representing the respondents and perusal of the records.

It is well elicited on the records that during the course of pendency of the appeal before the learned first appellate Court, prior to the passing of the impugned judgment and decree, an application for allowing the applicant/appellant to produce and prove his ACR was moved by way of leading additional evidence, which is placed on record as Annexure A1. Upon notice, the then respondent State had filed reply to this application and the matter was adjourned for arguments to 25.10.2013 from 30.08.2013 and subsequently orders dated 06.04.2016 were passed by the learned Additional District Judge, Sirsa **for consideration on application for additional evidence as well as for final arguments**. The matter was adjourned to 02.09.2016 to the same effect. Thereafter, it was adjourned to 28.09.016 from which date it was further adjourned to 17.10.2016 and 26.10.2016, 16.11.2016, 21.11.2016, 28.11.2016, 29.11.2016, 05.12.2016 and then to 13.12.2016 and it is thereafter on the next date i.e. 14.12.2016 arguments were heard and impugned judgment was passed on 14.12.2016 dismissing the appeal.

The lone contention of the learned counsel for the appellant is over the non consideration and disposal of the application for leading additional evidence moved by the then applicant plaintiff and which has been fairly conceded to at the bar by learned counsel for the respondent State Mr. S.S. Pannu, Dy. Advocate General, Haryana. The Courts are supposed to do substantial justice to the case of the parties and it is with those ends in view these provisions of objectivity and transparency in dispensation of justice have been brought about.

The impugned judgment and so the file of learned first appellate Court clearly reflects that there has been no order passed on the application for additional evidence of the present appellant and thus has resulted in miscarriage of justice going to the very roots of the case of the parties. Without considering the plea for additional evidence, the Court has rushed through the things thereby jeopardizing the legitimate and legal interest of the party. It would be in the fitness of things if the present appeal is allowed and remanded back to the learned first appellate Court to adjudicate on the application for additional evidence. It is made clear that in case the application is not dismissed, the lower Court would record the additional evidence on file and thereafter send its report along with judgment. The parties through their counsel are directed to appear before the first appellate Court on 16.03.2022. Complete records in original be also sent back.

(FATEH DEEP SINGH)
JUDGE

February 2, 2022

rps

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