

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(109)

CM-2814-C-2023 in/and
RSA-3184-2019
Date of Decision : 27.03.2023

Maharaja Agrasain Institute of Medical Research and Education
Agroha

...Appellant

Versus

Surinder Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Mayank Garg, Advocate and
Mr. Raman B. Garg, Advocate for the appellant.

Mr. Kshitij Sharma, Advocate for the respondent.

Harsimran Singh Sethi J. (Oral)

CM-2814-C-2023

Present application has been filed for placing on record the documents and for listing the main RSA i.e. RSA No. 3184 of 2019.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the same is allowed and documents are taken on record and the main RSA is listed for hearing today.

RSA-3184-2019

The present regular second appeal has been filed against the judgment and decree of the lower appellate court dated 10.10.2018 by which, the appeal filed by the respondent-plaintiff against the judgment and

decree of the trial court dated 24.08.2016, has been accepted and his suit has been allowed with a direction to the appellant-defendant to consider him for promotion to the post of Clerk w.e.f. 06.01.2012 along with consequential benefits as well as interest.

Learned counsel for the appellant-defendant argues that in the present case, the claim is being raised by placing reliance upon the benefit extended to one Angur Singh. Learned counsel for the appellant-defendant argues that both Angur Singh as well as respondent-plaintiff were working on a Class-IV Cadre but on different posts. Angur Singh, who was working as Security Guard, was promoted as a Clerk on 06.01.2012, which benefit was not extended to the respondent-plaintiff, who was working as a Ward boy, hence, respondent-plaintiff filed a civil suit claiming that he was senior to Angur Singh and was entitled for promotion to the post of Clerk with effect from the date, Angur Singh was promoted.

Learned counsel for the appellant-defendant submits that once both i.e. the respondent-plaintiff and Angur Singh were working in a different cadre even while working on a Class-IV Cadre, there was no joint seniority of all the posts in Class-IV Cadre claiming himself to be senior to Angur Singh only on the basis that he was elder in age than the said Angur Singh, is not a ground to grant him benefit of seniority in Class-IV cadre over and above Angur Singh so as to give direction to promote respondent-plaintiff to the post of Clerk with effect from the date Angur Singh was promoted.

Learned counsel further submits that even otherwise, the birth certificate has not been produced on record by the respondent-plaintiff to

show that he was elder in age than Angur Singh.

Learned counsel for the respondent-plaintiff, on the other hand, submits that once the respondent-plaintiff as well as Angur Singh were working in a Class-IV Cadre, though on different posts, once the benefit of promotion was given to Angur Singh to the post of Clerk on 06.01.2012, it was incumbent upon the appellant-defendant to consider the claim of the respondent-plaintiff for promotion being elder in age in preference to Angur Singh, therefore, the judgment of the lower appellate court is perfectly valid directing the appellant-department so as to grant the respondent-plaintiff the benefit of promotion to the post of Clerk w.e.f. 06.01.2012.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The seniority and the promotion are regulated by the rules governing the service of the institution concerned. Nothing has been brought to the notice of this Court that there exists any rule in the department that Class-IV employee's seniority is to be fixed on the basis of the age and not on the basis of continuous length of service. Further, no evidence in the shape of rules has been brought on record to show that there was a joint seniority of all the posts in Class-IV Cadre so that the claim of the respondent-plaintiff that he was senior to Angur Singh, could be accepted. The lower appellate court without appreciating these very facts has given a direction to the appellant-department to treat the respondent-plaintiff as senior to Angur Singh only on the basis that he was elder than Angur Singh in age despite both are working on different posts. The said analogy adopted by the lower appellate court to grant benefit to respondent-

plaintiff is not in accordance with to the service jurisprudence. Merely that the respondent-plaintiff was claiming himself to be elder in age qua another Class-IV employee, who was granted promotion to the post of Clerk on 06.01.2012, could not have been a ground to grant the said benefit to the respondent-plaintiff by treating him senior to Angur Singh, hence, the direction given by the lower appellate court to grant the respondent-plaintiff the benefit of promotion w.e.f. 06.01.2012 along with consequential benefits is perverse to the facts on record and cannot be sustained and is, accordingly, set-aside.

Learned counsel for the respondent-plaintiff submits that the direction, which has been given by the lower appellate court to promote the respondent-plaintiff as a Clerk with effect from the date, Angur Singh has been promoted is based upon the fact that both Angur Singh as well as the respondent-plaintiff were appointed in the Class-IV Cadre on the same date, hence, being elder in age, respondent-plaintiff is to be treated senior to Angur Singh in a Class-IV Cadre.

The said argument cannot be accepted for the reason that once it has already come on record that both Angur Singh as well as the respondent-plaintiff were appointed on different posts and nothing has been placed on record to show that there was a joint seniority list of all the Class-IV employees so as to place respondent-plaintiff senior to Angur Singh even if, both Angur Singh as well as respondent-plaintiff were appointed on the same date in a Class-IV Cadre, especially when, they were appointed on different posts. Hence, the said argument being raised by the learned counsel for the respondent-plaintiff so as to justify the order of the

lower appellate court cannot be accepted.

Even otherwise, the benefit was claimed on the basis that respondent-plaintiff was elder in age than Angur Singh. It is a conceded position that no birth certificate has been brought on record so as to prove even the said fact. In the absence of any contention that the respondent-plaintiff was senior to Angur Singh, he could not be treated senior to Angur Singh by the court below so as to grant benefit of promotion w.e.f. 06.01.2012 in the cadre of Clerks.

Keeping in view the above, it can be safely said that the findings recorded by the lower appellate court are contrary to the evidence on record and are not based upon the rules governing the service and are perverse, hence, the appeal filed by the appellant-defendant is accepted and the judgment and decree of the lower appellate court dated 10.10.2018 is set-aside and suit filed by the respondent-plaintiff is dismissed.

The appeal is allowed in above terms. Decree sheet be prepared accordingly.

March 27, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No