

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(256)

RSA No. 406 of 2021 (O&M)
Date of Decision : 14.03.2023

State of Haryana and another

...Appellants

Versus

Lala Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Vibha Tewari, Assistant Advocate General, Haryana
for the appellants.

Mr. J.P. Sharma, Advocate for the respondent No. 1.
(Service of respondents No. 2 to 4 dispensed with vide order
dated 30.11.2021).

Harsimran Singh Sethi J. (Oral)

CM-6230-C-2021

Present application has been filed for placing on record the
reply on behalf of respondent No. 1 to the application filed by the appellants

The application is allowed and reply on behalf of respondent
No. 1 to the application filed by the appellants is taken on record.

CM-2321-C-2021

The present application has been filed under Order 41 Rule 27
CPC for leading additional evidence by way of tendering the document as
Annexure A/1, which is just and necessary for the proper adjudication of the
claim raised in the present appeal.

Notice of the said application was issued on 19.07.2021 and the

reply to the said application has also been filed by the respondents concerned.

In the said reply, the only objection raised is that the document as Annexure A/1 has no relevance with the present controversy and was very much within the knowledge of the appellants at the stage of the trial itself.

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

The document Annexure A/1 sought to be brought on record by way of additional evidence is the order, by which the claim of the respondent-plaintiff for the grant of benefit of ACP Rules, 2008 has been declined on the ground that he has already been granted three financial up-gradation, due to which, he was not found entitled for the benefit keeping in view the Rule 7.4 of the Assured Career Progression Rules, 2008. The said order was passed after the institution of the suit and after filing of the reply. The said order dated 30.04.2015 is very much relevant to adjudicate the controversy in hand hence, the said application is allowed and document as Annexure A/1 is brought on record as additional evidence to be taken into consideration for deciding the present appeal.

RSA No. 406 of 2021

In the present regular second appeal, the challenge is to the judgments and decrees of the courts below dated 11.01.2017 and 09.12.2020 by which, the claim of the respondent-plaintiff has been allowed for the grant of benefit keeping in view Rule 7.4 of the Assured Career Progression Rules, 2008 (hereinafter referred to as 'Rule 7.4 of ACP Rules, 2008') on the ground that the respondent-plaintiff had completed 10 years of

service on a particular post and he was entitled for the benefit under Rule 7.4 of ACP Rules, 2008.

Learned counsel for the appellants-defendants argues that as per the rules governing the service, the release of the benefits under Rule 7.4 of ACP Rules, 2008 is only admissible to an employee, who has 10 years of service to his/her credit on a particular post and is eligible for promotion to the next higher post but the same could not be granted due to the non-availability of promotional avenue. Further, an employee, who had already got more than three financial up-gradation, cannot be treated as stagnating so as to be granted the benefit of Rule 7.4 of ACP Rules, 2008 and in the present case, keeping in view the order passed by the authorities concerned dated 30.04.2015 (Annexure A/1), it is clear that the first financial up-gradation was given to the respondent-plaintiff on 12.08.1988 while he was working as a Kanungo and the second financial up-gradation was given to him on 15.05.1993 while working as Naib Sadar Kanungo and the third financial up-gradation was given to him on 17.11.1995 while working as a Naib Tehsildar. Further, benefit of 3rd financial up-gradation was revised in the Cadre of Tehsildar, which makes it clear that keeping in view the financial up-gradations already made available to the respondent-plaintiff, he was not entitled for the benefit of Rule 7.4 of ACP Rules, 2008.

Learned counsel for the respondent-plaintiff has not been able to dispute the fact that the respondent-plaintiff had already got three financial up-gradations in his service career and also the factum that according to the rules governing the service, in case an employee has already got three financial up-gradations in his/her service career, the

benefit of Rule 7.4 of ACP Rules, 2008 is not available, is not denied.

Keeping in view the said fact, the judgments and decrees of the courts below directing the grant of benefit of Rule 7.4 of ACP Rules, 2008 to the respondent-plaintiff is contrary to the rules governing the service as well as against the actual facts and evidence on record.

Keeping in view the above, the judgments of the courts below cannot sustain being perverse to the rules governing the service on the aspect of the grant of ACP.

The judgments and decrees of the courts below dated 11.01.2017 and 09.12.2020 are accordingly set-aside and the suit filed by the respondent-plaintiff is dismissed keeping in view the reasons given hereinbefore.

Accordingly, the present regular second appeal is allowed. Decree sheet be prepared.

In case, any alternate remedy of appeal is available to the respondent-plaintiff qua the order Annexure A/1, the respondent-plaintiff will be at liberty to avail the same, if permissible under the law even after the passing of the present order.

CM-2322-C-2021

As the main appeal has been allowed, the present application stands disposed of.

March 14, 2023
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No